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Presidential Documents

Title 3—

The President

Executive Order 13738 of August 23, 2016

Amendment to Executive Order 13673

By the authority vested in me as President by the Constitution and the laws of the United States of America, including 40 U.S.C. 121, and in order to promote economy and efficiency in procurement by contracting with responsible sources who comply with labor laws, it is hereby ordered as follows:

Section 1. *Amendment to Executive Order 13673*. Executive Order 13673 of July 31, 2014 (Fair Pay and Safe Workplaces), is amended as follows:

(1) in subsection 2(a)(iv)(A), by inserting, after the word "disclose," the following: "to the entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a)";

(2) in subsection 2(a)(iv)(B), by striking "the information submitted by the subcontractor pursuant to subparagraph (A) of this paragraph" and replacing in lieu thereof the following: "the advice provided by the entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a), or the information submitted to that entity";

(3) in subsection 2(a)(v), by striking "to the contractor" and inserting in lieu thereof the following: "to an entity designated by a final rule amending the Federal Acquisition Regulation under subsection 4(a)"; and

(4) in subsection 4(c)(i), by striking "and (ii)".

Sec. 2. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 3. *Effective Date.* This order shall become effective immediately and shall apply to all solicitations for contracts as set forth in any final rule issued by the Federal Acquisition Regulatory Council under this order and Executive Order 13673 of July 31, 2014.

THE WHITE HOUSE,
August 23, 2016.

[FR Doc. 2016–20713
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Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

7 CFR Part 3430

RIN 0524–AA67

Agriculture and Food Research Initiative Competitive Federal Grants Program—General Administration Provisions

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is publishing as a final rule a revision to the general administrative guidelines applicable to the Agriculture and Food Research Initiative (AFRI) competitive grant program. The purpose of this final rule is to implement the Agriculture and Food Research Initiative commodity board provision added by section 7404 of the Agricultural Act of 2014 making it necessary to modify the AFRI regulations.

DATES: This final rule becomes effective on August 26, 2016. NIFA is requesting comments for 30 days until September 26, 2016.

ADDRESSES: You may submit comments, identified by Agriculture and Food Research Initiative Competitive Federal Grants Program—General Administration Provisions, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Email: commodityboards@nifa.usda.gov. Include Agriculture and Food Research Initiative Competitive Federal Grants Program—General Administration Provisions in the subject line of the message.

Instructions: All comments received must include the agency name and reference to Agriculture and Food Research Initiative Competitive Federal Grants Program—General Administration Provisions. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Maria Koszalka, Division Director, Policy and Oversight Division, Phone: 202–401–4325, Email: *maria.koszalka@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Summary

Authority

This rulemaking is authorized by section 2(b) of the Competitive, Special, and Faculties Research Grant Act 7 U.S.C. 450i(b).

Organization of 7 CFR Part 3430

A primary function of NIFA is the fair, effective, and efficient administration of Federal assistance programs implementing agricultural research, education, and extension programs. The awards made under the above authority are subject to the NIFA assistance regulations at 7 CFR part 3430, Competitive and Noncompetitive Non-formula Federal Assistance Programs—General Award Administrative Provisions. NIFA's development and publication of this regulation for its non-formula Federal assistance programs enhances its accountability and standardizes procedures across the Federal assistance programs it administers while providing transparency to the public. NIFA published 7 CFR part 3430 with subparts A through F as a final rule on September 4, 2009 [74 FR 45736–45752]. These regulations apply to all Federal assistance programs administered by NIFA except for the formula grant programs identified in 7 CFR 3430.1(f), the Small Business Innovation Research programs with implementing regulations at 7 CFR part 3403, and the Veterinary Medicine Loan Repayment Program (VMLRP), with implementing regulations at 7 CFR part 3431.

NIFA organized the regulation as follows: Subparts A through E provide administrative provisions for all competitive and noncompetitive non-formula Federal assistance programs. Subparts F and thereafter apply to specific NIFA programs.

NIFA is, to the extent practical, using the following subpart template for each program authority: (1) Applicability of regulations, (2) purpose, (3) definitions (those in addition to or different from § 3430.2), (4) eligibility, (5) project types and priorities, (6) funding restrictions, (7) matching requirements, and (8) duration of grant. Subparts F and thereafter contain the above seven components in this order. Additional sections may be added for a specific program if there are additional requirements or a need for additional rules for the program (*e.g.,* additional reporting requirements).

Through this rulemaking, NIFA is making minor additions to Subpart G—Agriculture and Food Research Initiative (AFRI) in order to implement the AFRI commodity board provision from section 7404 of the Agricultural Act of 2014 (Pub. L. 113–79).

Subpart G of 7 CFR 3430

Subpart G contains the administrative provisions for the Agriculture and Food Research Initiative (AFRI). The purpose of AFRI is to make competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences, as defined under section 1404 of the National Agriculture Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3103).

II. Revisions Included in the Final Rule

Subpart G

Section 7404 of the Agricultural Act of 2014 amended the general administration, special considerations, and eligible entities subsections for the Agriculture and Food Research Initiative (AFRI) program, and added a special contributions requirement making it necessary to modify the program's administrative provisions.

With this rule, NIFA makes clear that it will solicit funding ideas under this subpart from statutorily defined national and state commodity boards for research topics that the commodity boards are willing to co-fund equally with NIFA under the AFRI competitive grant program. If the ideas are evaluated and found to be consistent with the AFRI statutory priorities and priorities noted in the President's budget request related to NIFA, the topics will be incorporated in existing program areas in the relevant AFRI Request for Applications (RFA(s)). Researchers wishing to submit a proposal on a topic suggested by a commodity board will be required to obtain a letter of support from the co-funding commodity board. The applications submitted in response to a commodity board co-funded topic will compete against all proposals submitted in the same RFA program area. Supported applications will receive no preference regarding the evaluation of their scientific merit. Letters of commodity board support will be used by NIFA solely to determine that the application fits within the commodity board co-funded topic and the commodity board is willing to co-fund that application, if it is evaluated by the review panel as being meritorious and recommended for award.

III. Administrative Requirements for the Rulemaking

While the Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2), specifically exempts rules that involve public property, loans, grants, benefits, or contracts from notice-and-comment requirements, NIFA is issuing this rule as final with request for comments. Accordingly, NIFA is allowing 30 days for the submission of comments.

If upon consideration of the comments received in response to this notice NIFA decides to amend the AFRI final rule, NIFA will issue a subsequent final rule that includes an explanation of any changes made in response to the comments.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant.

Regulatory Flexibility Act of 1980

This final rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (5 U.S.C. 601–612). The Director certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. This final regulation will affect institutions of higher education receiving Federal funds under this program. The U.S. Small Business Administration Size Standards define institutions as "small entities" if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. The rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

Paperwork Reduction Act (PRA)

The Department certifies that this final rule has been assessed in accordance with the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* (PRA). The Department concludes that this final rule does not impose any new information requirements or increase the burden hours. In addition to the SF–424 form families (*i.e.*, Research and Related and Mandatory) and the SF–425 Federal Financial Report (FFR) No. 0348–0061, NIFA has three currently approved OMB information collections associated with this rulemaking: OMB Information Collection No. 0524–0042, NIFA REEport; No. 0524–0041, NIFA Application Review Process; and No. 0524–0026, Organizational Information.

Catalog of Federal Domestic Assistance

This final regulation applies to the following Federal financial assistance programs administered by NIFA including CFDA No. 10.310, Agriculture and Food Research Initiative (AFRI).

Unfunded Mandates Reform Act of 1995 and Executive Order 13132

The Department has reviewed this final rule in accordance with the requirements of Executive Order No. 13132 and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or tribal governments, or by the private sector, the Department has not prepared a budgetary impact statement.

Clarity of This Regulation

Executive Order 12866 and the President's Memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this final rule easier to understand.

List of Subjects in 7 CFR Part 3430

Administrative practice and procedure, Agricultural research, Education, Extension, Federal assistance.

Accordingly, the Department of Agriculture, National Institute of Food and Agriculture, adopts the final rule amending 7 CFR part 3430 which was published at 75 FR 54759 on September 9, 2010, and amends 7 CFR part 3430 as set forth below:

PART 3430—COMPETITIVE AND NONCOMPETITIVE NON–FORMULA FEDERAL ASSISTANCE PROGRAMS—GENERAL AWARD ADMINISTRATIVE PROVISIONS

■ 1. The authority citation for part 3430 continues to read as follows:

Authority: 7 U.S.C. 3316; Pub. L. 106–107 (31 U.S.C. 6101 note).

Subpart G—Agriculture and Food Research Initiative

■ 2. Add § 3430.313 to read as follows:

§ 3430.313 Inclusion of research topics proposed by national and state commodity boards in request for applications.

NIFA will solicit funding ideas under this subpart from statutorily defined national and state commodity boards for research topics that the commodity boards are willing to co-fund equally with NIFA under the AFRI competitive grant program. If the ideas are evaluated and found to be consistent with the AFRI statutory priorities and priorities noted in the President's budget request related to NIFA, the topics will be incorporated in existing program areas in the relevant AFRI Request for Applications (RFA(s)). Researchers wishing to submit a proposal on a topic suggested by a commodity board will be required to obtain a letter of support from the co-funding commodity board. The applications submitted in response to a commodity board co-funded topic will compete against all proposals submitted in the same RFA program area. Supported applications will receive no preference regarding the evaluation of their scientific merit. Letters of commodity board support will be used by NIFA solely to determine that the application fits within the commodity board co-funded topic and the commodity board is willing to co-fund that application, if it is evaluated by the review panel as being meritorious and recommended for award.

Done at Washington, DC, this 29 day of July, 2016.

Robert E. Holland,

Associate Director for Operations, National Institute of Food and Agriculture.

[FR Doc. 2016–18422 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–7026; Directorate Identifier 2016–CE–016–AD; Amendment 39–18620; AD 2016–17–07]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for PILATUS Aircraft Ltd. Model PC–7 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking on the main frame on frame 11 left and right fittings. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 30, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7026; or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* Internet: *http://www.pilatus-aircraft.com.* You may view this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–7026.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to PILATUS Aircraft Ltd. Model PC–7 airplanes. The NPRM was published in the **Federal Register** on June 9, 2016 (81 FR 37166). The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to a report of Stress Corrosion Cracking (SCC) on the Main Frame on Frame (FR) 11 left fitting Part Number (P/N) 112.35.07.489 and right fitting P/N 112.35.07.490.
>
> Such a condition, if left uncorrected, could lead to potential loss of the horizontal stabilizer.
>
> In order to correct and control the situation, this AD requires a one-time check to identify the material specification and inspect the affected areas of the airframe that are made of aluminum alloy AA2024–T351. Any structural parts of the aircraft structure found to be cracked must be reported to Pilatus prior to further flight.

The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/document?D=FAA-2016-7026-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 37166, June 9, 2016) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (81 FR 37166, June 9, 2016) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (81 FR 37166, June 9, 2016).

Related Service Information Under 1 CFR Part 51

We reviewed PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013; and PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, both dated February 25, 2016. PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016, describes procedures for initial and repetitive inspection of the main frame FR11 left and right fittings for stress corrosion cracking; and PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, dated February 25, 2016, describes procedures for replacement of the main frame FR11 left and right fittings when necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of the AD.

Costs of Compliance

We estimate that this AD will affect 19 products of U.S. registry. We also estimate that it would take about 3 work-hours per product to check the material specification of the fittings and 11 work-hours per product to inspect the 2014–T351 fittings as required in order to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $17,765, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 19 work-hours and require parts costing $5,000 for a cost of $6,615 per product. We have no way of determining the number of products that may need these actions.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–7026; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2016–17–07 PILATUS Aircraft Ltd.: Amendment 39–18620; Docket No. FAA–2016–7026; Directorate Identifier 2016–CE–016–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 30, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS Aircraft Ltd. Model PC–7 airplanes, manufacturer serial numbers (MSN) 101 through 618, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 53: Fuselage.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as stress corrosion cracking on the main frame on frame 11 left and right fittings, which can cause potential loss of the horizontal stabilizer. We are issuing this proposed AD to detect and correct stress corrosion cracking on the frame 11 left and right fittings.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (4) of this AD:

(1) Within the next 120 days after September 30, 2016 (the effective date of this AD), check the material specification of the Frame (FR) 11 left fitting part number (P/N) 112.35.07.489 and the FR 11 right fitting P/N 112.35.07.490 following the Accomplishment Instructions in paragraph 3.B. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(2) If fittings made of aluminum alloy AA2124–T851 are found during the inspection required by paragraph (f)(1) of this AD, within 30 days after the inspection or within the next 30 days after September 30, 2016 (the effective date of this AD), whichever occurs later, report the inspection results following the reporting requirements in paragraph 3.D. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(3) If fittings made of aluminum alloy AA2024–T351 are found during the inspection required by paragraph (f)(1) of this AD, before further flight, and repetitively thereafter at intervals not to exceed 12 months, inspect FR 11 left fitting, P/N 112.35.07.489 and the FR 11 right fitting, P/N 112.35.07.490, for cracks following the Accomplishment Instructions in paragraph 3.C. of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013, dated February 25, 2016.

(4) If cracks are found during any inspection required in paragraph (f)(3) of this AD, before further flight, replace the fittings following the Accomplishment Instructions in paragraph 3 of PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, dated February 25, 2016.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to Federal Office of Civil Aviation (FOCA) AD HB–2016–001, dated May 17, 2016, for related information. The MCAI can be found in the AD docket on the Internet at: *https://www.regulations.gov/document?D=FAA-2016-7026-0002.*

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–013; dated February 25, 2016; and

(ii) PILATUS Aircraft Ltd. PC–7 Service Bulletin No: 53–014, dated February 25, 2016.

(3) For PILATUS Aircraft Ltd. service information identified in this AD, contact PILATUS Aircraft Ltd., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; phone: +41 (0)41 619 67 74; fax: +41 (0)41 619 67 73; email: *techsupport@pilatus-aircraft.com;* Internet: *http://www.pilatus-aircraft.com.*

(4) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on August 17, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20074 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8992; Directorate Identifier 2016–CE–021–AD; Amendment 39–18621; AD 2016–17–08]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2016–07–24 for all Textron Aviation, Inc. Models 310 through 310R, E310H, E310J, T310P through T310R, 310J–1, 320 through 320F, 320–1, 335, 340, 340A, 401 through 401B, 402 through 402C, 411, 411A, 414, 414A, and 421 through 421C airplanes (type certificates 3A10, 3A25, and A7CE previously held by Cessna Aircraft Company). AD 2016–07–24 required replacement and repetitive inspections of the hardware securing the elevator trim tab push-pull rod. This AD retains the actions for AD 2016–07–24 but revises the repetitive inspection intervals and allows for a longer bolt for the attachment of the elevator trim tab actuator rod end to the push-pull tube connection and/or for the elevator trim tab horn end to the push-pull tube connection. This AD was prompted by comments indicating difficulties with bolt installation and requesting a revision to repetitive inspection intervals to coincide with established inspection intervals. We are issuing this AD to prevent jamming of the elevator trim tab in a position outside the normal limits of travel due to the loss of the attachment hardware connecting the elevator trim tab actuator to the elevator trim tab push-pull rod, which could result in loss of control.

DATES: This AD is effective September 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 12, 2016.

We must receive any comments on this AD by October 11, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Textron Aviation Customer Service, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 517–7271; email: *customercare@txtav.com;* Internet: *https://support.cessna.com/custsupt/csupport/newlogin.jsp.* You may review this referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8992.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8992; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Adam Hein, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4116; fax: (316) 946–4107; email: *adam.hein@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On March 30, 2016, we issued AD 2016–07–24, Amendment 39–18469 (81 FR 21250, April 11, 2016), ("AD 2016–07–24"), for all Textron Aviation, Inc. Models 310 through 310R, E310H, E310J, T310P through T310R, 310J–1, 320 through 320F, 320–1, 335, 340, 340A, 401 through 401B, 402 through 402C, 411, 411A, 414, 414A, and 421 through 421C airplanes (type certificates 3A10, 3A25, and A7CE previously held by Cessna Aircraft Company). AD 2016–07–24 required replacing the hardware connecting the elevator trim tab push-pull rod to the elevator trim tab actuator and elevator trim tab. AD 2016–07–24 resulted from accident reports on Textron Aviation, Inc. Models T310Q, 310Q, and 402B airplanes; lessons learned in accident investigation support; and analysis of past accidents. The analysis of National Transportation Safety Board (NTSB) determination of probable cause indicated that following the loss of the attachment hardware connecting the elevator trim tab actuator to the elevator trim tab push-pull rod, the elevator trim tab may jam in a position outside the normal limits of travel. We issued AD 2016–07–24 to require replacement and repetitive inspections of the hardware securing the elevator trim tab push-pull rod.

Actions Since AD 2016–07–24 Was Issued

Since we issued AD 2016–07–24, we have received reports of difficulties in installing the required bolt, part number (P/N) NAS464P3–8, because it was found in some cases to be too short to properly fasten with a cotter pin as required by the AD. It was also determined beneficial to revise the repetitive inspection intervals to better coincide with the standard established inspection intervals for these airplanes. We are issuing this AD to correct the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

We reviewed Textron Aviation, Inc. (Cessna Aircraft Company) Multi-engine Service Bulletin No. MEB–27–02, Revision 1, dated June 15, 2016. The service information describes procedures for replacing the hardware connecting the elevator trim tab push-pull rod to the elevator trim tab actuator and elevator trim tab. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires replacement and repetitive inspection of the elevator trim tab push-pull rod connecting hardware.

Differences Between the AD and the Service Information

Due to the immediate safety of flight condition of this AD action, we are requiring replacement of the hardware within 90 days after the effective date of this AD rather than the potential of up to a year as allowed in the service information.

The kit referenced in the service bulletin contains only standard parts that may be procured from other sources.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because the loss of the attachment hardware connecting the elevator trim tab actuator to the elevator trim tab push-pull rod may result in jamming of the elevator trim tab beyond normal limits, which could result in loss of ability to control the airplane. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2016–8992 and directorate identifier 2016–CE–021–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 5,066 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Elevator trim tab push-pull rod hardware replacement.	5 work-hour × $85 per hour = $425	$42	$467	$2,365,822
Repetitive Inspection	1 work-hour × $85 per hour = $85	Not applicable	85	430,610

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. This is the same replacement that is initially required by this AD. We have no way of determining the number of aircraft that might need this repetitive on-condition replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Elevator trim tab push-pull rod hardware replacement.	5 work-hours × $85 per hour = $425	$42	$467

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–07–24, Amendment 39–18469 (81 FR 21250, April 11, 2016) and adding the following new AD:

2016–17–08 Textron Aviation, Inc.: Amendment 39–18621; Docket No. FAA–2016–8992; Directorate Identifier 2016–CE–021–AD.

(a) Effective Date

This AD is effective September 12, 2016.

(b) Affected ADs

This AD replaces AD 2016–07–24, Amendment 39–18469 (81 FR 21250, April 11, 2016) ("AD 2016–07–24").

(c) Applicability

This AD applies to Textron Aviation, Inc. Models 310 through 310R, E310H, E310J, T310P through T310R, 310J–1, 320 through 320F, 320–1, 335, 340, 340A, 401 through 401B, 402 through 402C, 411, 411A, 414, 414A, and 421 through 421C airplanes (type certificates 3A10, 3A25, and A7CE previously held by Cessna Aircraft Company), all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2731, Elevator Tab Control System.

(e) Unsafe Condition

This AD supersedes AD 2016–07–24, which required replacement and repetitive inspections of the hardware securing the elevator trim tab push-pull rod. This AD retains the actions for AD 2016–07–24 but revises the repetitive inspection intervals and allows for a longer bolt for the attachment of the elevator trim tab actuator rod end to the push-pull tube connection and/or for the elevator trim tab horn end to the push-pull tube connection. This AD was prompted by comments indicating difficulties with bolt installation and requesting a revision to repetitive inspection intervals to coincide with established inspection intervals. We are issuing this AD to prevent jamming of the elevator trim tab in a position outside the normal limits of travel due to the loss of the attachment hardware connecting the elevator trim tab actuator to the elevator trim tab push-pull rod, which could result in loss of control.

(f) Actions and Compliance

Do the actions in paragraphs (f)(1) through (3) of this AD. If paragraph (f)(1) of this AD has already been done before September 12, 2016 (the effective date of this AD) following either Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, dated February 29, 2016 (see paragraph (g) of this AD) or Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, Revision 1, dated June 15, 2016, then credit can be taken and the only required actions are the repetitive actions of paragraphs (f)(2) and (3) of this AD.

(1) Within the next 90 days after September 12, 2016 (the effective date of this AD), replace the elevator trim tab push-pull rod attachment hardware on the elevator trim tab actuator and the trim tab ends of the push-pull rod following steps 3 through 6 of the accomplishment instructions in Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, Revision 1, dated June 15, 2016.

(2) Following the replacement required in paragraph (f)(1) of this AD or the replacement or previous repetitive general visual inspection done per AD 2016–07–24, whichever occurs later, repetitively conduct general visual inspections of the elevator trim tab push-pull rod attachment hardware on the elevator trim tab actuator and the trim tab ends of the push-pull rod at intervals not to exceed 110 hours TIS or 12 months, whichever occurs first. Before further flight, replace the hardware if necessary following the Compliance NOTE on page 1 of Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, Revision 1, dated June 15, 2016.

Note 1 to paragraph (f)(2) of this AD: The intent is to require these repetitive inspections during your regular maintenance schedule.

(3) After September 12, 2016 (the effective date of this AD), any time the elevator trim tab push-pull rod attachment hardware on the elevator trim tab actuator and/or trim tab ends of the push-pull rod is removed for any reason, discard the old hardware (bolt, nut, washer and cotter pin) and replace with new hardware following steps 4 and/or step 6 of Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, Revision 1, dated June 15, 2016.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD allows credit for the actions required in paragraphs (f)(1) of this AD if done before September 12, 2016 (the effective date of this AD) following the instructions of Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, dated February 29, 2016.

(h) Special Flight Permit

Special flight permits are allowed for this AD per 14 CFR 39.23 with the following limitation: Before flight a pre-flight visual inspection is required of the attachment hardware connecting the elevator trim tab actuator to the elevator trim tab push-pull rod. Confirmation of the presence of a castellated nut and cotter pin is required.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved previously for AD 2016–07–24 are valid as AMOCs for this AD.

(j) Related Information

For more information about this AD, contact Adam Hein, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4116; fax: (316) 946–4107; email: *adam.hein@faa.gov.*

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on September 12, 2016 (the effective date of this AD).

(i). Textron Aviation, Inc. (Cessna) Multi-engine Service Bulletin (SB) No. MEB–27–02, Revision 1, dated June 15, 2016.

(ii) Reserved.

(4) For Textron Aviation, Inc. (Cessna) service information identified in this AD, contact Textron Aviation Customer Service, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; fax: (316) 517–7271; email: *customercare@cessna.textron.com;* Internet: *https://support.cessna.com/custsupt/csupport/newlogin.jsp.*

(5) You may view this service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8992.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on August 17, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20073 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4221; Directorate Identifier 2015–NM–167–AD; Amendment 39–18619; AD 2016–17–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 767–200 and –300 series airplanes. This AD was prompted by an evaluation by the design approval holder (DAH) indicating that the aft pressure bulkhead web to pressure chord joint is subject to widespread fatigue damage (WFD). This AD requires repetitive high frequency eddy current (HFEC) inspections of the aft pressure bulkhead web at fasteners common to the bulkhead web and pressure chord, around the entire circumference of the pressure chord, for any crack, and repair of cracks. We are issuing this AD to detect and correct cracks in the aft pressure bulkhead web. Such cracking could result in the loss of structural integrity of the airplane.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4221; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767–200 and –300 series airplanes. The NPRM published in the **Federal Register** on March 8, 2016 (81 FR 12047) (“the NPRM”). The NPRM was prompted by an evaluation by the DAH indicating that the aft pressure bulkhead web to pressure chord joint is subject to WFD. The NPRM proposed to require repetitive HFEC inspections of the aft pressure bulkhead web at fasteners common to the bulkhead web and pressure chord, around the entire circumference of the pressure chord, for any crack, and repair of cracks. We are issuing this AD to detect and correct cracks in the aft pressure bulkhead web. Such cracking could result in the loss of structural integrity of the airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA’s response. Boeing and United Airlines supported the NPRM.

Effect of Winglets on Accomplishment of the Proposed Actions

Aviation Partners Boeing stated that accomplishing supplemental type certificate (STC) ST01920SE does not affect the actions specified in the proposed AD.

We concur with the commenter. We have redesignated paragraph (c) of the proposed AD as paragraph (c)(1), and added new paragraph (c)(2) to this AD to state that installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a “change in product” alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015. The service information describes procedures for HFEC inspections of the aft pressure bulkhead web at fasteners common to the bulkhead web and pressure chord, around the entire circumference of the pressure chord, for any crack, and repair of cracks. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 296 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	57 work-hours × $85 per hour = $4,845.	$0	$4,845	$1,434,120

The size of any repair area needs to be determined before material and work-hour costs can be calculated, so we cannot provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–06 The Boeing Company: Amendment 39–18619; Docket No. FAA–2016–4221; Directorate Identifier 2015–NM–167–AD.

(a) Effective Date

This AD is effective September 30, 2016.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all The Boeing Company Model 767–200 and –300 series airplanes, certificated in any category.

(2) Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/59027f43b9a7486e86257b1d006591ee/$FILE/ST01920SE_AML.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a "change in product" alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the design approval holder indicating that the aft pressure bulkhead web to pressure chord joint is subject to widespread fatigue damage. We are issuing this AD to detect and correct cracks in the aft pressure bulkhead web. Such cracking could result in the loss of structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Repetitive Inspections

Except as required by paragraph (h) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015, perform a surface high frequency eddy current (HFEC) inspection for cracking of the aft pressure bulkhead web at fasteners common to the bulkhead web and pressure chord, around the entire circumference of the pressure chord, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015. For this AD, Group 2, Configuration 2, as specified in Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015, includes airplanes with the aft pressure bulkhead replaced as specified in Boeing Alert Service Bulletin 767–53A0267. Repeat the inspection thereafter at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015.

(h) Service Information Exception

Where Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015, specifies a compliance time "after the original issue date of this service bulletin," this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Crack Repair

If any crack is found during any inspection required by paragraph (g) of this AD, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD. Although Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015, specifies to contact Boeing for repair instructions, and specifies that action as "RC" (Required for Compliance), this AD requires repair as specified in this paragraph. Installation of a repair terminates the inspections required by paragraph (g) of this AD in the area covered by the repair only.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) Except as required by paragraph (i) of this AD: For service information that contains steps that are labeled as RC, the provisions of paragraphs (j)(4)(i) and (j)(4)(ii) apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 767–53A0268, dated April 1, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 16, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 2016–20075 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–0463; Directorate Identifier 2015–NM–155–AD; Amendment 39–18623; AD 2016–17–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 777 airplanes. This AD was prompted by a report of an incident involving a landing in which the pilots needed to input corrections due to airplane yaw and roll to the right; the main landing gear (MLG) aft trunnion pin was later found to be fractured. This AD requires identification and replacement of certain MLG aft trunnion pins. We are issuing this AD to prevent a fractured MLG aft trunnion pin, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2016.

ADDRESSES: For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0463.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–0463; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 415–917–6590; email: *eric.lin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 777 airplanes. The NPRM published in the **Federal Register** on February 18, 2016 (81 FR 8164) ("the NPRM"). The NPRM was prompted by a report of an incident involving a landing in which the pilots needed to input corrections due to airplane yaw and roll to the right; the MLG aft trunnion pin was later found to be fractured. The NPRM proposed to require identification and replacement of certain MLG aft trunnion pins. We are issuing this AD to prevent a fractured MLG aft trunnion pin, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Support for the NPRM

Three commenters indicated their support for the NPRM.

Request To Update the Cost Section

One commenter, Gilles Oriot, asked that we update the cost estimate to reflect the costs shown in Boeing Information Notice 777–32A0103 IN 03, dated February 2, 2015.

We agree with the commenter and have updated the Costs of Compliance to reflect the updated information.

Request To Add to Credit Information

The Boeing Company, American Airlines, Air France, Korean Air, Etihad Airways, and All Nippon Airways requested that we allow installation of pins with serial numbers beginning with "EGL" or "MAL" that have been inspected previously but were not marked "BASE METAL INSPECTED" to fulfill the requirements of the proposed AD. The commenters stated that the previous inspection may have been done as part of a previous overhaul or required inspection using other service information that did not specify to mark "BASE METAL INSPECTED." The commenters also stated that the actions specified in the service information are consistent with the requirements of the proposed AD. The commenters suggested various changes in order to allow installation of these parts.

We acknowledge that previous inspections may have been done as part of an overhaul or previous service requests, but we do not agree with the suggested changes. We disagree because providing credit for the inspections required by this AD undermines the level of record review required by this AD for compliance, cannot ensure that the various actions taken for each pin are the same actions required by this AD, and may not provide an acceptable level of safety equivalent to this AD. Operators that would like credit for the actions performed before the effective date of this AD may request approval of an alternative method of compliance (AMOC). The request should include a list of affected pin serial numbers, the airplane on which each pin is currently installed (if applicable), and the actions that were performed for each pin with applicable service information. We have not changed this final rule regarding this issue.

Request To Allow Alternative Part Marking

FedEx requested that we allow the suffix "BMI" to be allowed for marking the pins. FedEx stated that its record keeping system can only track unique part number and serial number combinations; it is not capable of tracking the additional "BASE METAL INSPECTED" marking.

We disagree with the commenter's request. We disagree because pins can be rotated among other airplanes and operators. Operators need to be consistent with how the pins are identified to comply with this AD and ensure the safety of passengers and crew. We recommend that the commenter work with the manufacturer to identify a suitable method of compliance for future revision of the service information. We have not changed this final rule regarding this issue.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin 777–32A0103, Revision 1, dated December 10, 2015. The service information describes procedures for identifying and replacing certain MLG aft trunnion pins. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 123 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170	$0	$170	$20,910

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of aft trunnion pin	211 work-hours × $85 per hour = $17,935	$5,291	$23,226

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–10 The Boeing Company: Amendment 39–18623; Docket No. FAA–2016–0463; Directorate Identifier 2015–NM–155–AD.

(a) Effective Date

This AD is effective September 30, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 777–200, 777–200LR, 777–300, 777–300ER, and 777F series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by a report of an incident involving a landing in which the pilots needed to input corrections due to airplane yaw and roll to the right; the main landing gear (MLG) aft trunnion pin was later found to be fractured. We are issuing this AD to prevent a fractured MLG aft trunnion pin, which could result in collapse of the MLG and consequent loss of control of the airplane during landing.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Aft Trunnion Pin Identification

For airplanes on which the original airworthiness certificate or the original export certificate of airworthiness was issued on or before the effective date of this AD: Within 36 months after the effective date of this AD, identify the serial number and marking of the MLG aft trunnion pins, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–32A0103, Revision 1, dated December 10, 2015.

(h) MLG Aft Trunnion Pin Replacement

For any MLG aft trunnion pin that begins with serial number "EGL" or "MAL," on which no "BASE METAL INSPECTED" marking is found, replace with a new or serviceable MLG aft trunnion pin within 36 months after the effective date of this AD, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 777–32A0103, Revision 1, dated December 10, 2015.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, any MLG aft trunnion pin that begins with serial number "EGL" or "MAL" and is not marked "BASE METAL INSPECTED."

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Multi-Operator Message (MOM) MOM–MOM–15–0303–01B, dated May 13, 2015, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 777–32A0103, dated September 11, 2015, which is not incorporated by reference in this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(4) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(4)(i) and (k)(4)(ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(l) Related Information

(1) For more information about this AD, contact Eric Lin, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6412; fax: 415–917–6590; email: *eric.lin@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (m)(4) of this AD.

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin 777–32A0103, Revision 1, dated December 10, 2015.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 17, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20375 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8846; Directorate Identifier 2016–NM–046–AD; Amendment 39–18624; AD 2016–17–11]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 787–8 airplanes. This AD requires a one-time inspection of the engine pylon wiring bracket on the left wing for the presence of an existing corner relief fillet, and corrective action if necessary. This AD was prompted by a report indicating that the engine pylon wiring bracket on certain airplanes was missing a corner relief fillet, which could result in stress concentration and cracking in the engine pylon wiring bracket. We are issuing this AD to detect and correct cracking in the engine pylon wiring bracket. Such cracking could result in damage to adjacent power feeders, subsequent electrical arcing in a flammable leakage zone, and consequent uncontrollable fire.

DATES: This AD is effective September 12, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 12, 2016.

We must receive comments on this AD by October 11, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8846.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8846; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We received a report indicating that the engine pylon wiring bracket on certain airplanes is missing a corner relief fillet, because the engineering graphics for the engine pylon wiring bracket located on the left wing did not contain the corner relief fillet. A missing corner relief fillet could result in stress concentration and cracking in the bracket. The engineering graphics were subsequently revised to add the corner relief fillet, but the engine pylon wiring bracket part number was not changed. Therefore, brackets with and without an existing corner relief fillet have the same bracket part number. We are issuing this AD to prevent cracking in the engine pylon wiring bracket. Such cracking could result in damage to adjacent power feeders, subsequent electrical arcing in a flammable leakage zone, and consequent uncontrollable fire.

Related Service Information Under 1 CFR Part 51

We reviewed Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013. The service information describes procedures for a one-time inspection of the engine pylon wiring bracket on the left wing for the presence of existing corner relief fillets, re-identification of any bracket with an existing corner relief fillet, and replacement of any bracket without an existing corner relief fillet. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

Currently, there are no domestic operators of the affected airplanes on the U.S. Register. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number and Directorate Identifier 2016–NM–046–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

Currently, there are no affected airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, we estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	3 work-hours × $85 per hour = $255	$0	$255	$255

We estimate the following costs to do any necessary re-identification or replacement that will be required based on the results of the inspection. We have no way of determining the number of aircraft that might need re-identification or replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Re-identification of bracket	2 work-hours × $85 per hour = $170	$0	$170
Replacement of bracket	8 work-hours × $85 per hour = $680	1,173	1,853

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs" describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–11 The Boeing Company: Amendment 39–18624; Docket No. FAA–2016–8846; Directorate Identifier 2016–NM–046–AD.

(a) Effective Date

This AD is effective September 12, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 787–8 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report indicating that the engine pylon wiring bracket on certain airplanes was missing a corner relief fillet, which could lead to stress concentration and cracking in the engine pylon wiring bracket. We are issuing this AD to detect and correct cracking in the engine pylon wiring bracket. Such cracking could result in damage to adjacent power feeders, subsequent electrical arcing in a flammable leakage zone, and consequent uncontrollable fire.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) One-Time Inspection and Corrective Actions

Within 88 months after the effective date of this AD: Do a one-time general visual inspection of the engine pylon wiring bracket on the left wing for the presence of an existing corner relief fillet, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013. Within 88 months after the effective date of this AD, do all applicable corrective actions specified in paragraph (g)(1) or (g)(2) of this AD.

(1) For airplanes on which the engine pylon wiring bracket has a corner relief fillet, re-identify the part number of the engine pylon wiring bracket, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013.

(2) For airplanes on which the engine pylon wiring bracket does not have a corner relief fillet, replace the engine pylon wiring bracket with a new bracket, in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (i) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

For more information about this AD, contact Fnu Winarto, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6659; fax: 425–917–6590; email: *fnu.winarto@faa.gov.*

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin B787–81205–SB570012–00, Issue 001, dated March 14, 2013.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(4) You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 16, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20374 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3696; Directorate Identifier 2015–NM–113–AD; Amendment 39–18625; AD 2016–17–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321 series airplanes. This AD was prompted by a report of a partial loss of the no-back brake (NBB) efficiency during endurance qualification tests on the trimmable horizontal stabilizer actuator (THSA). This AD requires inspecting certain THSAs to determine the number of total flight cycles the THSA has accumulated, and replacing the THSA if necessary. We are issuing this AD to prevent premature wear of the carbon friction disks on the NBB of the THSA, which could lead to reduced braking efficiency in certain load conditions, and, in conjunction with the inability of the power gear train to keep the ball screw in its last commanded position, could result in uncommanded movements of the trimmable horizontal stabilizer and loss of control of the airplane.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2016.

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3696.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3696; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321 series airplanes. The NPRM published in the **Federal Register** on February 17, 2016 (81 FR 8023) (''the NPRM'').

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0080, dated May 7, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A318 and A319 series airplanes, Model A320–211, –212, –214, –231, –232, and –233 airplanes, and Model A321 series airplanes. The MCAI states:

> During endurance qualification tests on A380 Trimmable Horizontal Stabilizer Actuator (THSA), a partial loss of the no-back brake (NBB) efficiency was experienced. Investigation results concluded that this particular malfunction was due to an ageing/endurance issue of the surfaces of the NBB carbon friction disks, leading to a partial loss of braking efficiency in some specific aerodynamic load conditions.
>
> Due to design similarity on A320 family fleet, the same tests were initiated by the THSA manufacturer on certain SA [single-aisle] type THSA, sampled from the field. Subject tests confirmed that THSA Part Number (P/N) 47145 series, as installed on A320 family aeroplanes, are also affected by this partial loss of NBB efficiency.
>
> This condition, if not detected and corrected, and in conjunction with the power gear train not able to keep the ball screw in its last commanded position, could lead to an uncommanded movement of the THS, possibly resulting in loss of control of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires [inspecting certain THSAs to determine the number of total flight cycles the THSA has accumulated and replacing THSAs having certain total flight cycles] . . . .

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3696.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Refer to the Latest Service Information

Airbus requested that we refer to the latest service information: Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016 (we referred to Airbus Service Bulletin A320–27–1242, dated February 9, 2015, as the appropriate source of service information for accomplishing the replacement specified in the NPRM). Airbus also requested that we provide credit for previous actions done per Airbus Service Bulletin A320–27–1242, dated February 9, 2015.

We agree with the request to refer to the latest service information. Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016, includes updated information and specifies that no additional work is necessary for airplanes modified by the previous issue. We have revised paragraphs (h)(1) and (h)(2) of this AD to refer to Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016. We have also added new paragraph (k) to this AD (and redesignated subsequent paragraphs accordingly) to provide credit for actions done as specified in Airbus Service Bulletin A320–27–1242, dated February 9, 2015.

Request To Extend the Compliance Times

United Airlines (UAL) requested that we extend the compliance times proposed in the NPRM. UAL stated that U.S. operators receive less time to prepare and plan compared to their counterparts in Europe who follow EASA AD 2015–0080, dated May 7, 2015. UAL noted that the large amount of THSAs that need to be replaced will cause cancellations, spare shortages, and interruptions to its operation. UAL recommended a later compliance time than proposed in paragraph (g)(2) of the proposed AD.

We disagree with the request to extend the compliance time. UAL did not provide data to substantiate that an extension to the compliance time will provide an acceptable level of safety. We determine AD compliance times primarily on our assessment of the safety risk. Some safety issues are more time-sensitive than others, so we consider the overall risk to the fleet, including the severity of the failure and the likelihood of the failure's occurrence.

We and our colleagues in the foreign civil airworthiness authorities (in this case, EASA) work closely with manufacturers to ensure that all appropriate actions are taken at appropriate times to mitigate risks to the fleet and address identified unsafe conditions. In addition, U.S. operators have the same opportunity as their European counterparts to prepare and plan by reviewing and providing comments to EASA's proposed airworthiness directives (PADs). An EASA PAD is a rulemaking document similar to the FAA's NPRM. In most cases, the FAA follows the intent of the AD issued by the state of design; therefore, we encourage U.S. operators to provide feedback to EASA PADs, which are accessible at the following link: *http://ad.easa.europa.eu.*

For this AD, we determined that accomplishing the replacements before specific dates, as stated in the MCAI, are necessary in order to address the identified unsafe condition in a timely manner. Therefore, we have not changed this AD in this regard. However, under the provisions of paragraph (l)(1) of this AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request To Remove Replacement Requirement

UAL requested that we remove the replacement requirement specified by paragraph (h)(2) of the proposed AD. UAL stated that the requirements in paragraphs (h)(1) and (h)(2) of the proposed AD are contradictory. UAL noted that operators will not be able to predict the future number of flight cycles. UAL stated, as an example, that a THSA having accumulated 38,000 total flight cycles on the effective date would be out of compliance with paragraph (h)(2) of the proposed AD when the AD becomes effective, since the THSA has exceeded 36,000 total flight cycles.

We disagree with the request to remove paragraph (h)(2) of this AD. However, we do find it necessary to clarify the requirements. After accomplishing each inspection required by paragraph (g) of this AD, operators must comply with paragraph (h)(1) of this AD, which mandates the first requirement for THSA replacement after each inspection of the THSAs if any part number 47145–(XXX) is found and the THSA has exceeded the corresponding flight-cycle limits specified in paragraphs (g)(1) through (g)(5) of this AD.

Paragraph (h)(2) of this AD establishes the life limit of the THSA as of each date specified in paragraphs (g)(1) through (g)(5) of this AD and mandates replacement before the corresponding flight-cycle limit. The flight-cycle limit varies on each date specified in paragraphs (g)(1) through (g)(5) of this AD. Paragraphs (h)(1) and (h)(2) of this AD are separate requirements that do not conflict.

For example, if the THSA has accumulated 38,000 total flight cycles as of the effective date of this AD, then paragraph (h)(1) of this AD does not require replacement immediately (on the effective date of this AD) since the THSA has fewer than 40,000 total flight cycles (which is the flight-cycle limit specified in paragraph (g)(1) of this AD). That THSA would be subject to the compliance time of paragraph (h)(2) of this AD, which requires that, as of the effective date of this AD, the THSA must be replaced before exceeding 40,000 total flight cycles until the next inspection is done before December 31, 2016. The new flight-cycle limit as of that date is 36,000 total flight cycles (which is the flight-cycle limit specified in paragraph (g)(2) of this AD).

Each U.S. operator has unique fleet utilization data that can assist in predicting the number of flight cycles accumulated on the THSA and therefore can estimate when a THSA must be replaced. However, under the provisions of paragraph (l)(1) of this AD, we may approve requests for adjustments to the compliance time for replacing the THSA if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed this AD in this regard.

Change to Paragraph (j) of This AD

We made minor changes to the language in paragraph (j) of this AD to clarify the parts installation limitation.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

We reviewed Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016. The service information describes procedures for replacing the THSA with a serviceable THSA. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 959 airplanes of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $81,515, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 21 work-hours and require parts costing $26,500, for a cost of $28,285 per product. We have no way of determining the number of aircraft that might need this action.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–12 Airbus: Amendment 39–18625; Docket No. FAA–2016–3696; Directorate Identifier 2015–NM–113–AD.

(a) Effective Date

This AD is effective September 30, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, all manufacturer serial numbers.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a report of a partial loss of the no-back brake (NBB) efficiency during endurance qualification tests on the trimmable horizontal stabilizer actuator (THSA). We are issuing this AD to prevent premature wear of the carbon friction disks on the NBB of the THSA, which could lead to reduced braking efficiency in certain load conditions, and, in conjunction with the inability of the power gear train to keep the ball screw in its last commanded position, could result in uncommanded movements of the trimmable horizontal stabilizer and loss of control of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection To Determine THSA Part Number and Accumulated Total Flight Cycles

No later than each date specified in paragraphs (g)(1) through (g)(5) of this AD: Inspect the THSA to determine if it has a part number (P/N) 47145–(XXX), and, if any THSA P/N 47145–(XXX) is found, determine the total number of flight cycles accumulated since the THSA's first installation on an airplane, or since the most recent NBB replacement, whichever is later. A review of airplane delivery or maintenance records is acceptable in lieu of this inspection if the part number of the THSA can be conclusively determined from that review. In case maintenance records concerning the most recent NBB disk replacement are unavailable or incomplete, the total flight cycles accumulated since first installation of the THSA on an airplane apply.

(1) As of the effective date of this AD: The THSA flight-cycle limit (since first installation on an airplane, or since the most recent NBB replacement, whichever is later) is 40,000 total flight cycles.

(2) As of December 31, 2016: The THSA flight-cycle limit (since first installation on an airplane, or since the most recent NBB replacement, whichever is later) is 36,000 total flight cycles.

(3) As of December 31, 2017: The THSA flight-cycle limit (since first installation on an airplane, or since the most recent NBB replacement, whichever is later) is 33,600 total flight cycles.

(4) As of December 31, 2018: The THSA flight-cycle limit (since first installation on an airplane, or since the most recent NBB replacement, whichever is later) is 31,600 total flight cycles.

(5) As of December 31, 2019: The THSA flight-cycle limit (since first installation on an airplane, or since the most recent NBB replacement, whichever is later) is 30,000 total flight cycles.

(h) Replacements

For airplanes with any THSA P/N 47145–(XXX): Do the replacements required by paragraphs (h)(1) and (h)(2) of this AD.

(1) No later than each date specified in paragraphs (g)(1) through (g)(5) of this AD, replace all THSA that have reached or exceeded on each date the corresponding number of flight cycles specified in paragraphs (g)(1) through (g)(5) of this AD. Do the replacement in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016. Affected THSAs must be replaced with serviceable THSAs.

(2) As of each date specified in paragraphs (g)(1) through (g)(5) of this AD, and before exceeding the flight cycle limit corresponding to each date, as applicable: Replace each THSA with a serviceable THSA, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016.

(i) Definition of Serviceable THSA

For the purposes of this AD: A serviceable THSA is a THSA that has not exceeded the applicable flight-cycle limits, as specified paragraphs (g)(1) through (g)(5) of this AD, since first installation of the THSA on an airplane or since last NBB replacement, whichever is later.

Note 1 to paragraph (i) of this AD: Guidance for NBB disc replacement can be found in UTC Aerospace Systems Service Bulletin 47145–27–17, Revision 1, dated July 21, 2015.

(j) Parts Installation Limitation

As of each date specified in paragraphs (g)(1) through (g)(5) of this AD, as applicable, only installation of a serviceable THSA P/N 47145–(XXX) is allowed on an airplane.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–27–1242, dated February 9, 2015.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Special Flight Permits

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0080, dated May 7, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3696.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (o)(4) of this AD.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A320–27–1242, Revision 01, dated February 4, 2016.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20381 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–3990; Directorate Identifier 2015–NM–153–AD; Amendment 39–18622; AD 2016–17–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by two in-service incidents reported on Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes regarding a loss of all air data information in the flight deck. This AD requires revision of the airplane flight manual (AFM) to provide procedures to guide the crew to stabilize the airplane's airspeed and attitude for continued safe flight. We are issuing this AD to prevent loss of air data information that may affect continued safe flight.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 30, 2016.

ADDRESSES: For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3990.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3990; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone: 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on March 4, 2016 (81 FR 11467) ("the NPRM"). The NPRM was prompted by two in-service incidents reported on Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes regarding a loss of all air data information in the flight deck. The NPRM proposed to require revision of the airplane flight manual (AFM) to provide procedures to guide the crew to stabilize the airplane's airspeed and attitude for continued safe flight. We are issuing this AD to prevent loss of air data information that may affect continued safe flight.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2015–08, dated April 28, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. The MCAI states:

> Two in-service incidents have been reported on CL–600–2C10 aeroplanes regarding a loss of all air data information in the cockpit. The air data information was recovered as the aeroplane descended to lower altitudes. An investigation determined that the root cause in both events was high altitude icing (ice crystal contamination). If not addressed, this condition may affect continued safe flight.
>
> Due to similarities in the air data systems, such events could happen on all Bombardier CRJ models, CL–600–2B19, CL–600–2C10, CL–600–2D15, CL–600–2D24 and CL–600–2E25. Therefore, the corrective actions for these models will be mandated once their respective Airplane Flight Manual (AFM) revisions become available.
>
> This [Canadian] AD mandates the incorporation of AFM procedures to guide the crew to stabilize the aeroplanes airspeed and attitude for continued safe flight.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3990.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request for Further Investigation

The Air Line Pilots Association stated that the AFM revision will not address the root cause of the high-altitude icing (ice crystal contamination), and requested that further investigation be done for the ice crystal contamination issue and remedies be provided in addition to the AFM amendments.

We agree that the AFM revision will not address the root cause of the high-altitude icing (ice crystal contamination). The manufacturer is investigating the issue, but there is no timetable for a final resolution. Should the manufacturer develop modifications to prevent this problem, the FAA will consider further rulemaking. The incorporation of the AFM procedures is meant to be used to guide the crew on how to stabilize the airplane airspeed and altitude for continued safe flight in icing conditions. However, further investigation into this matter extends beyond the scope of this AD.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Emergency Procedure 1., Unreliable

Airspeed, of Section 03–19, Emergency Procedures—Unreliable Airspeed, of Chapter 3, Emergency Procedures, in Volume 1 of the Bombardier CRJ Series Regional Jet CL–600–2D15 and CL–600–2D24 Airplane Flight Manual CSP C–012, Revision 11A, dated May 25, 2015. The service information describes procedures to guide the crew to stabilize the airplane's airspeed and attitude for continued safe flight. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Interim Action

Required actions in this AD apply only to Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes. We may consider issuing further rulemaking on the other Bombardier airplane models identified previously.

Costs of Compliance

We estimate that this AD affects 230 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Cost per product	Cost on U.S. operators
AFM revision	1 work-hour × $85 per hour = $85	$85	$19,550

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–09 Bombardier, Inc.: Amendment 39–18622; Docket No. FAA–2016–3990; Directorate Identifier 2015–NM–153–AD.

(a) Effective Date

This AD is effective September 30, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of two in-service incidents on Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes regarding a loss of all air data information in the flight deck. We are issuing this AD to prevent air data information loss that may affect continued safe flight.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Airplane Flight Manual (AFM) Revision

Within 30 days after the effective date of this AD, revise the Emergency Procedures section of the AFM to include the information in Emergency Procedure 1., Unreliable Airspeed, of Section 03–19, Emergency Procedures—Unreliable Airspeed, of Chapter 3, Emergency Procedures, in Volume 1 of the Bombardier CRJ Series Regional Jet CL–600–2D15 and CL–600–2D24 AFM CSP C–012, Revision 11A, dated May 25, 2015.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE 172, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7301; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2015–08, dated 28 April, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–3990.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Section 03–19, Emergency Procedures—Unreliable Airspeed, of Chapter 3, Emergency Procedures, in Volume 1 of the Bombardier CRJ Series Regional Jet CL–600–2D15 and CL–600–2D24 Airplane Flight Manual CSP C–012, Revision 11A, dated May 25, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone: 1–866–538–1247 or direct-dial telephone: 1–514–855–2999; fax 514–855–7401; email: *ac.yul@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 17, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20376 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–6983; Directorate Identifier 2016–CE–012–AD; Amendment 39–18618; AD 2016–17–05]

RIN 2120–AA64

Airworthiness Directives; RUAG Aerospace Services GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2009–13–04 for RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive wear on the guide pin of the power lever or condition lever, which could cause functional loss of the flight idle stop. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 30, 2016.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 30, 2016.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983; or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dornier228@ruag.com;* Internet: *http://www.ruag.com/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. It is also available on the Internet at *http://www.regulations.gov* by searching for Docket No. FAA–2016–6983.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes. That NPRM was published in the **Federal Register** on June 1, 2016 (81 FR 34927), and proposed to supersede AD 2009–13–04, Amendment 39–15943 (74 FR 29116; June 19, 2009) (“AD 2009–13–04”).

The NPRM proposed to correct an unsafe condition for the specified products and was based on mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country. The MCAI (EASA AD No.: 2009–0031R1) states that:

> Excessive wear on a guide pin of a power lever was detected during inspections. The failure of a power lever or condition lever guide pin could cause functional loss of the flight idle stop.
>
> This condition, if not corrected, could lead to inadvertent activation of the beta mode in flight, possibly resulting in loss of control of the aeroplane.
>
> Prompted by this finding, RUAG issued Alert Service Bulletin (ASB) ASB–228–279 to provide inspection instructions. Consequently, EASA issued AD 2009–0031 to require repetitive detailed inspections of the guide pins of the power levers and condition levers, and replacement of any pin that exceeds the allowable wear-limits.
>
> Since that AD was issued, further analysis has determined that the inspection interval, in case of no pin replacement, can be extended and RUAG published Revision 1 of ASB–228–279, which also included landings (expressed in this AD as flight cycles—FC) as a determining factor.
>
> For the reason described above, this AD revises EASA AD 2009–0031, amending the compliance times without changing the technical requirements, and also introducing some editorial changes for standardization.

EASA revised the MCAI (EASA AD No.: 2009–0031R2) to incorporate changes to the applicability. The FAA had already incorporated these changes in the NPRM so no changes to the final rule are necessary.

The MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (74 FR 29116; June 19, 2009) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (74 FR 29116; June 19, 2009) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (74 FR 29116; June 19, 2009).

Related Service Information Under 1 CFR Part 51

We reviewed the RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015. The service information describes procedures for repetitive inspections of the guide pins of the power and condition levers and replacement of those pins if necessary. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section of the AD.

Costs of Compliance

We estimate that this AD will affect 18 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $10 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $30,780, or $1,710 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15943 (74 FR 29116; June 19, 2009), and adding the following new AD:

2016–17–05 RUAG Aerospace Services GmbH: Amendment 39–18618; Docket No. FAA–2016–6983; Directorate Identifier 2016–CE–012–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 30, 2016.

(b) Affected ADs

This AD supersedes AD 2009–13–04, Amendment 39–15943 (74 FR 29116; June 19, 2009) ("AD 2009–13–04").

(c) Applicability

This AD applies to RUAG Aerospace Services GmbH Models 228–100, 228–101, 228–200, 228–201, 228–202, and 228–212 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 76: Engine Controls.

(e) Reason

This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as excessive wear on the guide pin of the power lever or condition lever, which could cause functional loss of the flight idle stop. We are issuing this proposed AD to amend the compliance times of the guide pin inspections.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (4) of this AD based on a compliance time of hours time-in-service (TIS) or flight cycles, whichever occurs first. If the flight cycles or hours TIS of the throttle box assembly is unknown, use the hours TIS of the airplane to determine the compliance time for the inspection.

(1) For throttle box assemblies with less than 9,600 hours TIS or 9,600 flight cycles since installed: Inspect the guide pins of the power and condition levers for excessive wear following the Accomplishment Instructions in paragraph 2 of RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015, at the following times:

(i) Initially, unless already done within the last 1,200 hours TIS or 1,200 flight cycles as of July 24, 2009 (the effective date retained from AD 2009–13–04), before or upon accumulating 9,600 hours TIS or 9,600 flight cycles, or within the next 100 hours TIS or 100 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04), whichever occurs later, inspect the guide pins of the power and condition levers for excessive wear; and

(ii) Repetitively thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced or within 9,600 hours TIS or 9,600 flight cycles, whichever occurs first, since the previous inspection in which the power and condition levers guide pins were replaced.

(2) For throttle box assemblies with 9,600 hours TIS or more or 9,600 flight cycles or more but less than 13,200 hours TIS or

13,200 flight cycles since installed: Inspect the guide pins of the power and condition levers for excessive wear within the next 1,200 hours TIS or 1,200 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04) following the Accomplishment Instructions in paragraph 2 of RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015; and

(i) Repetitively inspect the guide pins of the power and condition levers for excessive wear thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced; or

(ii) Repetitively inspect the guide pins of the power and condition levers for excessive wear within 9,600 hours TIS or 9,600 flight cycles since the previous inspection in which the power and condition levers guide pins were replaced.

(3) For throttle box assemblies with 13,200 hours TIS or more or 13,200 flight cycles or more since installed: Within 100 hours TIS or 100 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04) inspect the guide pins of the power and condition levers for excessive wear following the Accomplishment Instructions in paragraph 2 of RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015, at the following times:

(i) Initially within the next 100 hours TIS or 100 flight cycles after July 24, 2009 (the effective date retained from AD 2009–13–04); and

(ii) Repetitively thereafter within 4,800 hours TIS or 4,800 flight cycles since any previous inspection in which the power and condition levers guide pins were not replaced or within 9,600 hours TIS or 9,600 flight cycles since the previous inspection in which the power and condition levers guide pins were replaced.

(4) For all throttle box assemblies: Before further flight after any inspection required in paragraph (f)(1), (2), or (3) of this AD, replace any guide pin that exceeds the acceptable wear-limits as defined in paragraph 4.1 of RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0031R1, dated March 29, 2016, and EASA AD No.: 2009–0031R2, dated June 28, 2016, for related information. The MCAI can be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983.

(i) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) RUAG Aerospace Services GmbH Dornier 228 Alert Service Bulletin No. ASB–228–279, revision 1, dated September 22, 2015.

(ii) Reserved.

(3) For RUAG Aerospace Services GmbH service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; email: *custsupport.dornier228@ruag.com;* Internet: *http://www.ruag.com/.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148. In addition, you can access this service information on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–6983.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on August 17, 2016.

Pat Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20072 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 10, 128, 143, and 145

[CBP Dec. No. 16–13; USCBP–2016–0057]

RIN 1515–AE09

Administrative Exemption on Value Increased for Certain Articles

AGENCY: U.S. Customs and Border Protection; Department of the Treasury.

ACTION: Interim final rule; solicitation of comments.

SUMMARY: This document amends the U.S. Customs and Border Protection regulations to implement section 901 of the Trade Facilitation and Trade Enforcement Act of 2015 by raising from $200 to $800 the value of certain articles that may be imported by one person on one day free of duty and tax. This document also makes clarifying and conforming amendments to the regulations.

DATES:

Effective date: This interim final rule is effective on August 26, 2016.

Comment date: Written comments must be submitted on or before September 26, 2016.

ADDRESSES: You may submit comments, identified by docket number USCBP–2016–0057, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

Instructions: All submissions received must include the agency name and docket title for this rulemaking, and must reference docket number USCBP–2016–0057. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of the document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected during business days between the hours of 9:00 a.m. and 4:30 p.m. at the Office of Trade, U.S. Customs and Border Protection, 90 K Street NE., 10th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Randy Mitchell, Director, Commercial Operation, Revenue and Entry, Trade Policy and Programs, Office of Trade, U.S. Customs and Border Protection, (202) 863–6532.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. U.S. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this interim rule. Comments that will provide the most assistance to CBP in finalizing these regulations will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. CBP is also interested in receiving comments regarding the collection of data on behalf of Partner Government Agencies (PGAs) for shipments valued below $800. *See* **ADDRESSES** above for information on how to submit comments.

I. Background

A. Trade Facilitation and Trade Enforcement Act of 2015

On February 24, 2016, President Obama signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Pub. L. 114–125). Prior to enactment of the TFTEA, section 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)) authorized CBP to provide an administrative exemption to admit free from duty and tax shipments of merchandise (other than bona fide gifts and certain personal and household goods) imported by one person on one day having an aggregate fair retail value in the country of shipment not less than $200. Section 901(c) of the TFTEA amended section 1321(a)(2)(C) by increasing the value of this administrative exemption from $200 to $800. Pursuant to section 901(d) of TFTEA, the effective date of this amendment was the 15th day after the date of enactment, *i.e.*, effective as of March 10, 2016. Section 901 did not change the administrative exemption for bona fide gifts and personal or household articles accompanying travelers under 19 U.S.C. 1321(a)(2)(A) and 1321(a)(2)(B).

B. Amendments to Regulations To Reflect New Statutory Amount

CBP implements the administrative exemption provided for in 19 U.S.C. 1321 in its regulations at 19 CFR 10.151 and 10.153. The administrative exemption amount is also referenced in various other sections in the CBP regulations: §§ 128.21(a)(4)(ii); 128.24(d) and (e); 143.21(l)(1); 143.23(j); 143.26; and 145.31. In all of the previously listed sections that currently provide that the 19 U.S.C. 1321(a)(2)(C) administrative exemption amount is $200, CBP is amending the regulations to reflect that the new amount is $800.

C. Other Amendments to Administrative Exemption Regulations

Under 19 U.S.C. 1321(b), the Secretary of the U.S. Department of the Treasury is authorized to promulgate regulations to prescribe exceptions to any exemption provided for in section 1321(a) whenever the Secretary finds that such action is necessary for any reason to protect the revenue or to prevent unlawful importations.

This rule also amends the scope of alcohol and tobacco products covered by the limitation in paragraph (e) of section 10.153, to conform to other past statutory changes. Perfume is removed from the list of products excluded from the administrative exemption because the excise tax on such products was eliminated in 1995 pursuant to section 136 of the Uruguay Round Agreements Act, Public Law 103–465. Paragraph (e) of section 10.153 is also amended pursuant to amendments to the Internal Revenue Code, Section 5701, which increased excise taxes for smokeless tobacco, pipe tobacco, roll-your-own tobacco, and cigarette tubes and papers. 26 U.S.C. 5701, as amended by the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111–3).

This rule also adds a new paragraph (h) in section 10.153 to clarify that regarding shipments that qualify for the 19 U.S.C. 1321 administrative exemption, the importing party is not exempt from having to pay any applicable excise taxes collected by other agencies on imported goods. It is also noted that pursuant to 19 CFR 24.24(d)(3), the harbor maintenance tax will not be assessed on loadings or unloadings of cargo in which the shipment would be entitled to be entered under informal entry procedures.

This document also revises paragraph (j) of § 143.23 to clarify that different dollar amounts apply to articles that are bona fide gifts and articles that are shipped from the Virgin Islands, Guam, and American Samoa. This document also revises paragraph (j) of § 143.23 to reflect that the increase in the value of shipments from $200 to $800 only applies to shipments that qualify for the administrative exemption under sections 10.151 and 128.24(e).

D. Comments

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. In particular, CBP is seeking comments on how CBP can maintain the collection of data required by Partner Government Agencies (PGAs) for imported merchandise to prevent unlawful importations when shipments of merchandise valued below $800 that qualify for an administrative exemption are admitted through "release from manifest." (Generally, such shipments are entered by the carrier and released by CBP based on information contained on the manifest or bill of lading provided by the carrier.) CBP is aware that the manifest information may not contain all the necessary information required by PGAs for admissibility purposes.

II. Statutory and Regulatory Requirements

A. Inapplicability of Notice and Delayed Effective Date

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.

Treasury and CBP find that prior notice and comment procedures are unnecessary and that good cause exists to issue these regulations effective upon publication. By immediately effectuating this interim rule, CBP can avoid inconsistent application of the exemption and eliminate confusion that may arise among importers with regard to the scope of the exemption and with regard to payment of excise taxes.

Pursuant to section 901(d) of the TFTEA, Congress established March 10, 2016, as the effective date of the increase in the administrative exemption under 19 U.S.C. 1321(a)(2)(C). The clear intent of Congress is that this amendment be rapidly implemented; therefore the regulations must be changed to conform to TFTEA's statutory amendment.

In addition, pursuant to the authority of the Secretary of the Treasury under 26 U.S.C. 7805(b)(3), regulations implementing the internal revenue laws can be made immediately effective to prevent abuse. Under that authority, these regulations reflect intervening statutory changes to section 5701 of the Internal Revenue Code, which increased excise taxes for smokeless tobacco, pipe tobacco, roll-your-own tobacco, and cigarette tubes and papers.

Accordingly, pursuant to 5 U.S.C. 553(b) and (d) and the Secretary of the Treasury's authority under 19 U.S.C. 1321(b) and 26 U.S.C. 7805, the requirements for prior notice and comment and a delay in effective date are inapplicable; however, CBP is soliciting comments on this interim rule and will consider all comments received before issuing a final rule.

B. Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a "significant regulatory action," under section 3(f) of Executive Order 12866.

C. The Regulatory Flexibility Act

This section examines the impact of the rule on small entities as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people). The Regulatory Flexibility Act applies when agencies are required to publish a general notice of proposed rulemaking for a proposed rule. Since a general notice of proposed rulemaking is not necessary in this rulemaking, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

D. Paperwork Reduction Act

As there is no new collection of information required in this document, the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) are inapplicable.

Signing Authority

This document is being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Entry of merchandise, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements.

19 CFR Part 128

Administrative practice and procedure, Customs duties and inspection, Entry, Express consignments, Imports, Reporting and recordkeeping requirements.

19 CFR Part 143

Customs duties and inspection, Entry of merchandise, Reporting and recordkeeping requirements.

19 CFR Part 145

Customs duties and inspection, Reporting and recordkeeping requirements.

Amendments to the CBP Regulations

For the reasons stated above in the preamble, CBP amends parts 10, 12, 128, 143, and 145 of title 19 of the Code of Federal Regulations (19 CFR parts 10, 12, 128, 143, and 145) as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

§ 10.151 [Amended]

■ 2. Amend § 10.151 by removing the figure "$200" and adding in its place "$800" in the section heading and the first sentence.

■ 3. Amend § 10.153 by revising paragraph (e) and by adding paragraph (h) to read as follows:

§ 10.153 Conditions for exemption.

* * * * *

(e) No alcoholic beverage, cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco, shall be exempted from the payment of duty and tax under § 10.151 or § 10.152.

* * * * *

(h) The exemption provided for in § 10.151 is not to be allowed with respect to any tax imposed under the Internal Revenue Code collected by other agencies on imported goods.

PART 128—EXPRESS CONSIGNMENTS

■ 4. The general authority citation for part 128 continues to read as follows:

Authority: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

* * * * *

§ 128.21 [Amended]

■ 6. Amend § 128.21 in paragraph (a)(4)(ii) by removing the figure "$200" and adding in its place "$800".

§ 128.24 [Amended]

■ 7. Amend § 128.24 in paragraphs (d) and (e) by removing the figure "$200" and adding in its place "$800" in paragraph (d) and in three places in paragraph (e) introductory text.

PART 143—SPECIAL ENTRY PROCEDURES

■ 8. The general authority citation for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

* * * * *

§ 143.21 [Amended]

■ 9. Amend § 143.21 in paragraph (l)(1) by removing the figure "$200" and adding in its place "$800".

■ 10. Amend § 143.23 by revising paragraph (j) and adding paragraph (k) to read as follows:

§ 143.23 Form of entry.

* * * * *

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13, and 148.62 of this chapter), a shipment of merchandise that qualifies for informal entry under 19 U.S.C. 1498 may be entered, including the information listed in paragraph (k) of this section, by presenting the bill of lading or a manifest listing each bill of lading when:

(1) The value of the shipment does not exceed $100 in the case of a bona fide gift from a person in a foreign country to a person in the United States and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter);

(2) The value of the shipment does not exceed $200 in the case of articles (including bona fide gifts) from the Virgin Islands, Guam, and American Samoa and the shipment meets the requirements in § 10.152 of this chapter (see § 10.152 of this chapter); or

(3) The value of the shipment does not exceed $800 and the shipment satisfies the requirements in § 10.151 of this chapter (see §§ 10.151 and 128.24(e) of this chapter).

(k) The following information is required to be filed as a part of entry made under paragraph (j) of this section:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity;

(6) Shipping weight; and

(7) Value.

■ 11. Amend § 143.26 by removing the figure "$200" and adding in its place "$800" in two places each in paragraphs (a) and (b).

PART 145—MAIL IMPORTATIONS

■ 12. The general authority citation for part 145 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624.

* * * * *

§ 145.31 [Amended]

■ 13. Amend § 145.31 by removing the figure "$200" and adding in its place "$800" in the section heading and text.

R. Gil Kerlikowske,

Commissioner, U.S. Customs and Border Protection.

Approved: August 23, 2016.

Timothy E. Skud,

Assistant Secretary of the Treasury.

[FR Doc. 2016–20581 Filed 8–25–16; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1305, and 1308

[Docket No. DEA–375]

Schedules of Controlled Substances: Placement of Thiafentanil Into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Interim final rule with request for comments.

SUMMARY: The Drug Enforcement Administration is placing the substance thiafentanil (4-(methoxycarbonyl)-4-(N-phenmethoxyacetamido)-1-[2-(thienyl)ethyl]piperidine), including its isomers, esters, ethers, salts and salts of isomers, esters and ethers as possible, into schedule II of the Controlled Substances Act. This scheduling action is pursuant to the Controlled Substances Act, as revised by the Improving Regulatory Transparency for New Medical Therapies Act which was signed into law on November 25, 2015.

DATES: The effective date of this rule is August 26, 2016. Interested persons may file written comments on this rule in accordance with 21 U.S.C. 811(j)(3) and 21 CFR 1308.43(g). Electronic comments must be submitted, and written comments must be postmarked, on or before September 26, 2016. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

Interested persons, defined at 21 CFR 1300.01 as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)," may file a request for hearing or waiver of hearing pursuant to 21 CFR 1308.44 and in accordance with 21 CFR 1316.45 and/or 1316.47, as applicable. Requests for hearing and waivers of an opportunity for a hearing or to participate in a hearing must be received on or before September 26, 2016.

ADDRESSES: To ensure proper handling of comments, please reference "Docket No. DEA–375" on all correspondence, including any attachments.

- *Electronic comments:* The Drug Enforcement Administration encourages that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the Web page or attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission, you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.
- *Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a paper comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.
- *Hearing requests:* All requests for hearing and waivers of participation must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for hearing and waivers of participation should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/LJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/ODW, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Michael J. Lewis, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record. They will, unless reasonable cause is given, be made available by the Drug Enforcement

Administration (DEA) for public inspection online at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act (FOIA) applies to all comments received. If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be made publicly available, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You must also place all of the personal identifying information you do not want made publicly available in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be made publicly available, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You must also prominently identify the confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information or personal identifying information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document and supplemental information, including the complete Department of Health and Human Services and Drug Enforcement Administration eight-factor analyses, to this interim final rule are available at *http://www.regulations.gov* for easy reference.

Request for Hearing, Notice of Appearance at Hearing, or Waiver of Participation in Hearing

Pursuant to 21 U.S.C. 811(a), this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551–559. 21 CFR 1308.41–1308.45; 21 CFR part 1316, subpart D. In accordance with 21 CFR 1308.44(a)–(c), requests for a hearing, notices of appearance, and waivers of an opportunity for a hearing or to participate in a hearing may be submitted only by interested persons, defined as those "adversely affected or aggrieved by any rule or proposed rule issuable pursuant to section 201 of the Act (21 U.S.C. 811)." 21 CFR 1300.01. Requests for a hearing and notices of participation must conform to the requirements of 21 CFR 1308.44(a) or (b), as applicable, and include a statement of the interest of the person in the proceeding and the objections or issues, if any, concerning which the person desires to be heard. Any waiver of an opportunity for a hearing must conform to the requirements of 21 CFR 1308.44(c), including a written statement regarding the interested person's position on the matters of fact and law involved in any hearing.

Please note that pursuant to 21 U.S.C. 811(a), the purpose and subject matter of the hearing are restricted to "(A) find[ing] that such drug or other substance has a potential for abuse, and (B) mak[ing] with respect to such drug or other substance the findings prescribed by subsection (b) of section 812 of this title for the schedule in which such drug is to be placed . . . ." Requests for a hearing and waivers of participation in the hearing should be submitted to the DEA on or before the deadline specified above, using the address information provided therein.

Background, Legal Authority, and Basis for This Scheduling Action

Thiafentanil, known chemically as 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine, a potent opioid, is an analogue of fentanyl. The product Thianil (thiafentanil oxalate, a salt form of thiafentanil) was reviewed by the Food and Drug Administration (FDA) to determine whether it meets the requirements for addition to the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (the Index) (21 U.S.C. 360ccc–1) as set forth by the Minor Use and Minor Species Animal Health Act of 2004 (MUMS Act, 2004). The MUMS Act amended the Federal Food, Drug, and Cosmetic Act (FDCA) to allow for the legal marketing of unapproved new animal drugs intended for use in minor species. In a letter from the Department of Health and Human Services (HHS) dated June 20, 2016, the DEA received notification that HHS/FDA added Thianil (thiafentanil oxalate) to the Index under section 572 of the FDCA. In this same notification, HHS/FDA stated that on June 16, 2016, HHS/FDA granted the request for the addition of Thianil to the Index under Minor Species Index File (MIF) 900000. Thianil is indicated for use in the immobilization of non-domestic, non-food-producing minor species hoofstock.

Thiafentanil will be marketed as thiafentanil oxalate, 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidinium oxalate. Thiafentanil should not be confused with thiofentanyl (*N*-phenyl-*N*-(1-(2-(thiophen-2-yl)ethyl)piperidin-4-yl)propionamide), which is currently listed as a controlled schedule I substance.

Under the Controlled Substances Act (CSA), as amended in 2015 by the Improving Regulatory Transparency for New Medical Therapies Act (Pub. L. 114–89), where the DEA receives notification from HHS that the Secretary has indexed a drug under section 572 of the FDCA, the DEA is required to issue an interim final rule controlling the drug not later than 90 days after receiving such notification from HHS. 21 U.S.C. 811(j). Accordingly, the DEA is issuing this interim final rule controlling thiafentanil.

When controlling a drug pursuant to section 811(j), the DEA must apply the scheduling criteria of subsections 811(b), (c), and (d) and section 812(b). 21 U.S.C. 811(j)(3). In accordance with these criteria, the DEA has reviewed the scientific and medical evaluation and scheduling recommendation provided by the HHS, along with all other relevant data, and completed its own eight-factor review document on thiafentanil pursuant to 21 U.S.C. 811(c). As explained below, based on these considerations, the DEA concludes that thiafentanil meets the criteria for placement in schedule II of the CSA.

On November 28, 2011, the HHS provided the DEA with its initial scientific and medical evaluation and scheduling recommendation regarding thiafentanil. Pursuant to 21 U.S.C. 811(b), this document contained an eight-factor analysis of the abuse potential of thiafentanil as a new drug, along with the HHS' recommendation to control thiafentanil and its salts under schedule II of the CSA. Subsequently, on March 23, 2016, the HHS provided the DEA with a supplement to its 2011 analysis, which indicated that the HHS/FDA planned to add Thianil (thiafentanil oxalate) to the Index for use in the immobilization of non-domestic, non-food-producing minor species hoofstock and reiterated their recommendation that thiafentanil be placed in schedule II of the CSA. By letter dated June 20, 2016, the DEA received notification from the HHS that the FDA had granted the request on June 16, 2016, for Thianil (thiafentanil oxalate) to be added to the Index.

Pursuant to 21 U.S.C. 811(j), and based on the HHS recommendation, MUMS Act indication by the HHS/FDA, and the DEA's determination, the DEA finds that thiafentanil has a high potential for abuse, a currently accepted medical use with severe restrictions, and that abuse of thiafentanil may lead to severe psychological or physical dependence. Accordingly, the DEA is issuing this interim final rule to add thiafentanil (4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine) and its isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of such, to schedule II of the CSA.

Included below is a brief summary of each factor as analyzed by the HHS and the DEA, and as considered by the DEA in its scheduling action. Please note that the DEA and HHS analyses, along with the HHS supplement, are available in their entirety under "Supporting Documents" in the public docket for this interim final rule at *http://www.regulations.gov,* under Docket Number "DEA–375." Full analysis of, and citations to, the information referenced in the summary may also be found in the supporting and related material.

1. *The Drug's Actual or Relative Potential for Abuse:* Thiafentanil is a chemical substance that has not been marketed in the United States, however, it is approved and marketed in the Republic of South Africa as a salt form under the brand name Thianil (thiafentanil oxalate). There is no information available which details actual abuse of thiafentanil.

According to the HHS, thiafentanil is a synthetic analogue of fentanyl and is structurally related to other fentanyl-like opioids such as sufentanil (schedule II) and carfentanil (schedule II). It acts as a potent μ-opioid receptor agonist and produces strong morphine-like effects in animals. It is only intended for the immobilization of non-domestic, non-food-producing minor species hoofstock. Thiafentanil has been used in a manner similar to other opioid immobilizing agents such as etorphine hydrochloride (schedule II) and carfentanil (schedule II), which are approved only for veterinary use as animal immobilization agents. The abuse potential of thiafentanil has not been evaluated in humans or in animal behavioral models that are predictors of abuse by humans. Because thiafentanil shares chemical and pharmacological similarities with schedule II fentanyl and its analogues, the abuse potential of thiafentanil is considered similar to that of schedule II opioid substances such as sufentanil and carfentanil.

Pharmacologically, as a potent μ opioid receptor agonist, thiafentanil is slightly less potent than carfentanil, which is 100 times more potent than fentanyl and 10,000 times more potent than morphine. Thiafentanil is a potent fentanyl analogue. Thus, it is reasonable to assume that there will be potentially significant diversion of thiafentanil from legitimate channels by people who have access to it, and that thiafentanil would be used without medical advice, therefore causing substantial hazards to the users or to the safety of the community if not controlled. The chemical and potent opioid-like pharmacological properties of thiafentanil predict that its risk to the public health is likely to be similar to fentanyl (schedule II) and its analogues such as carfentanil (schedule II), sufentanil (schedule II) and alpha-methylfentanyl (schedule I).

2. *Scientific Evidence of the Drug's Pharmacological Effects, if Known:* According to HHS' scientific and medical review, there are no data on the effects of thiafentanil in humans. Thiafentanil's effects in humans are predicted from its effects in animals and its chemical and pharmacological similarity to other schedule II potent opioids such as fentanyl and carfentanil.

The HHS eight-factor review document described a study directly comparing the immobilizing effects of thiafentanil (15 mg) and carfentanil (2 or 4 mg) in elk in which thiafentanil produced a faster immobilization effect (0.7 to 2.2 minutes) than carfentanil. In addition, the elk returned to standing 0.9 to 1.4 minutes faster under the thiafentanil condition. This study appears to support a faster immobilization and recovery time with thiafentanil relative to carfentanil. However, the authors stated that the role of the increased dose of thiafentanil is unknown.

Animal studies described by the HHS demonstrated that the effects of thiafentanil and carfentanil are completely reversed by naltrexone. As a μ-opioid receptor antagonist, naltrexone can reverse the effects of a variety of opioid drugs including thiafentanil and carfentanil. Those studies suggest that thiafentanil possesses a neuro-pharmacological mechanism of action similar to other schedule II opioid drugs with a high abuse potential.

According to HHS' review, Thianil (thiafentanil) is currently approved and registered for use in the Republic of South Africa. Thiafentanil oxalate is suggested as a drug of choice in the capture of exotic and ungulate wildlife species.

3. *The State of Current Scientific Knowledge Regarding Thiafentanil:* The chemical name of free base thiafentanil is 4-(methoxycarbonyl)-4-(*N*-phenylmethoxyacetamido)-1-[2-(2-thienyl)ethyl]piperidine. It has a molecular formula of $C_{22}H_{28}N_2O_4S$ and a molecular weight of 416.52 g/mol with a Chemical Abstract Registry Number (CAS) of 101345–60–2. Thiafentanil oxalate is also known as A3080 with a CAS number of 101365–73–5 and has a molecular formula of $C_{24}H_{30}N_2O_8S$ with a molecular weight of 506.57 g/mol. Thiafentanil oxalate is a white crystalline powder with a melting point of 190–192 °C and its salt crystalizes from absolute alcohol. Thiafentanil should not be confused with thiofentanyl (*N*-phenyl-*N*-(1-(2-(thiophen-2-yl)ethyl)piperidin-4-yl)propionamide), which is currently listed as a schedule I substance.

4. *Its History and Current Pattern of Abuse:* According to the HHS' review, there are no reports of actual abuse and misuse of thiafentanil. This may be due to the limited use of thiafentanil as an immobilizing agent by trained veterinarians.

Current data from the National Forensic Laboratory System (NFLIS),[1] the System to Retrieve Information from Drug Evidence (STRIDE),[2] and the STARLiMS databases show that there is no evidence of law enforcement encounters of thiafentanil in the United States. However, thiafentanil's pharmacological and structural properties suggest that its pattern of abuse would be similar to other potent schedule II μ-opioid receptor agonists such as fentanyl and carfentanil.

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[1] The National Forensic Laboratory System (NFLIS) is a program of the DEA, Office of Diversion Control. NFLIS systematically collects drug identification results and associated information from drug cases submitted to and analyzed by State and local forensic laboratories. NFLIS represents an important resource in monitoring illicit drug abuse and trafficking, including the diversion of legally manufactured pharmaceuticals into illegal markets. NFLIS is a comprehensive information system that includes data from forensic laboratories that handle approximately 90% of an estimated 1.0 million distinct annual State and local drug analysis cases. NFLIS includes drug chemistry results from completed analyses only. While NFLIS data is not direct evidence of abuse, it can lead to an inference that a drug has been diverted and abused. *See* 76 FR 77330, 77332, Dec. 12, 2011.

[2] The System to Retrieve Information from Drug Evidence (STRIDE) is a database of drug exhibits sent to DEA laboratories for analysis. Exhibits from the database are from the DEA, other federal agencies, and local law enforcement agencies. Reporting via STRIDE ceased on September 30, 2014. STRIDE was succeeded by STARLiMS.

5. *The Scope, Duration, and Significance of Abuse:* An assessment of the scope, duration, and significance of thiafentanil abuse is not available since it has only been used in a limited market. However, as stated in the HHS review, the structural and pharmacological properties of thiafentanil suggest that it could lead to an abuse pattern with a scope, duration, and significance of abuse similar to that observed with other opioid drugs and opioid analogues if it were marketed in a non-controlled status or were the subject of clandestine synthesis. The HHS and DEA note that thiafentanil is not known to be or to have been the subject of abuse in the United States.

6. *What, if any, Risk There is to the Public Health:* The HHS review indicates that thiafentanil presents a significant risk to the public health and, in this vein, that thiafentanil should only be used in certain animals for very limited purposes and with extreme caution. Based on the review of the structural and pharmacological properties of thiafentanil, the HHS concluded that the abuse of thiafentanil is likely to pose a similar risk to public health as that of other potent opioid drugs such as sufentanil (schedule II), fentanyl (schedule II), carfentanil (schedule II) and clandestinely synthesized alpha-methylfentanyl (schedule I). Thus, inappropriate use of thiafentanil poses a high risk to the public health. Among other things, HHS noted that as a fentanyl derivative, and assuming that thiafentanil can be aerosolized, the use of thiafentanil presents a significant risk to the public health.

HHS described that thiafentanil's labeling indicates that it is solely intended for use by zoologic, wildlife, or exotic animal veterinarians or field biologists who have received training and are supervised by veterinarians. The sponsor recommends the use of handling protocols similar to those in place for other scheduled potent opioids such as carfentanil. HHS further indicated that thiafentanil should be handled in teams consisting of at least two individuals knowledgeable about the hazards of working with potent μ-opioid agonist substances. Personal protective equipment such as latex gloves and protective eyewear should be used and syringes must be disposed of properly. If exposure to thiafentanil occurs in a remote or distant environment, veterinary naltrexone is recommended for use as a reversal agent. The label information will further state that thiafentanil must never be used unless an adequate amount of reversal agent (naltrexone hydrochloride) is immediately available.

HHS also describes the risk of thiafentanil intoxication upon ingestion of animals immobilized with thiafentanil. The label information states that thiafentanil is not intended for human or animal consumption or in non-food producing minor species that become eligible for consumption by humans or food-producing animals. Because thiafentanil, similar to carfentanil, etorphine hydrochloride and diprenorphine, is a potent μ-opioid receptor agonist, it will be subject to specialized handling, distribution and storage procedures similar to those applicable for carfentanil, etorphine hydrochloride and diprenorphine as set forth in 21 CFR parts 1301 and 1305. As a result, this interim final rule revises 21 CFR 1301.74(g), 1301.75(e), 1305.07 introductory text and paragraph (a), and 1305.17(d) to include "thiafentanil."

7. *Its Psychic or Physiological Dependence Liability:* HHS' review states that the structural and pharmacological properties of thiafentanil suggest that it possesses a psychic and physiological dependence liability that is similar to other schedule II related μ-opioid receptor agonist drugs such as sufentanil, fentanyl and carfentanil.

As cited by the HHS review, a double-blind abuse liability study examining intravenous fentanyl, buprenorphine, heroin, morphine, and oxycodone in methadone-maintained patients reported that fentanyl produced subjective effects similar to heroin (schedule I) on several outcome measures indicating that the two drugs produce similar subjective effects. It also demonstrates the psychic dependence liability of fentanyl, and thiafentanil is expected to produce effects similar to fentanyl and to present a similar risk of psychic and physiological dependence. There has been a major increase in abuse of opioids analgesics in the United States (HHS review document, 2011; Compton and Volkow, 2006). Thiafentanil, similar to these opioid analgesics, presents a risk of severe psychic and physiological dependence.

8. *Whether the Substance is an Immediate Precursor of a Substance Already Controlled under the CSA:* Thiafentanil is not considered an immediate precursor of any controlled substance.

Determination of Appropriate Schedule

The CSA lists the findings required to place a drug or other substance in any particular schedule (I, II, III, IV, or V). 21 U.S.C. 812(b). After consideration of the analysis and recommendation of the Assistant Secretary for Health of the HHS and review of all available data, the Acting Administrator of the DEA, pursuant to 21 U.S.C. 812(b)(2), finds that:

1. Thiafentanil has a high potential for abuse. Based on its structural and pharmacological properties, thiafentanil has an abuse potential that is comparable to other schedule II opioid drugs such as fentanyl, carfentanil, and sufentanil;

2. FDA determined that Thianil (thiafentanil oxalate) meets the requirements for addition to the Index as set forth by the MUMS Act, 2004 and accordingly added Thianil (thiafentanil oxalate) to the Index of Legally Marketed Unapproved New Animal Drugs for Minor Species (the Index) under section 572 of the Federal Food, Drug, and Cosmetic Act. Thianil (thiafentanil oxalate) will be legally marketed in the United States and will have an accepted medical use with severe restrictions;[3] and

3. Due to the chemical and pharmacological similarities of thiafentanil to other schedule II fentanyl derivatives, abuse of thiafentanil may lead to severe psychological or physical dependence.

Based on these findings, the Acting Administrator of the DEA concludes that thiafentanil, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existences of such isomers, esters, ethers, and salts is possible warrants control in schedule II of the CSA. 21 U.S.C. 812(b)(2).

Requirements for Handling Thiafentanil

Thiafentanil is subject to the CSA's schedule II regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule II substances, including the following:

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[3] According to the HHS analysis, "[u]se of a new animal indexed drug is subject to significant restrictions. For example, use of an indexed new animal drug for minor species is limited to a minor species for which there is a reasonable certainty that the animal or edible products from the animal will not be consumed by humans or food producing animals. 21 U.S.C. § 360ccc–l(a)(1). The requester must label, distribute, and promote the new animal drug in accordance with the Index entry, and the FDA may remove a new animal drug from the Index if the conditions and limitations of use have not been followed. 21 U.S.C. 360ccc–l(d)(l)(G); (f)(l)(F). The labeling of an indexed new animal drug must prominently state that the extra-label use of the product is prohibited. 21 U.S.C. 360ccc–l(h). Such restrictions are not imposed upon approved human or animal drugs."

1. *Registration.* Any person who desires to handle thiafentanil (manufacture, distribute, reverse distribute, dispense, import, export, engage in research, or conduct instructional activities or chemical analysis with, or possess), must be registered with the DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312.

2. *Quota.* Only registered manufacturers are permitted to manufacture thiafentanil in accordance with a quota assigned pursuant to 21 U.S.C. 826 and in accordance with 21 CFR part 1303.

3. *Disposal of stocks.* Upon obtaining a schedule II registration to handle thiafentanil, and if subsequently, any person who does not desire or is not able to maintain a schedule II registration must surrender all quantities of currently held thiafentanil, or may transfer all quantities of currently held thiafentanil to a person registered with the DEA in accordance with 21 CFR part 1317, in addition to all other applicable federal, state, local, and tribal laws.

4. *Security.* Thiafentanil is subject to schedule II security requirements and must be handled and stored pursuant to 21 U.S.C. 821 and 823, and in accordance with 21 CFR 1301.71–1301.93.

5. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of thiafentanil must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302. In addition, thiafentanil is subject to additional labeling requirements provided by FDA. Thiafentanil must be labeled, distributed, and promoted in accordance with the Index entry of the new animal drug and the FDA may remove a new animal drug from the Index if the conditions and limitations of use have not been followed. 21 U.S.C. 360ccc–l(d)(l)(G); (f)(l)(F). The labeling of an indexed new animal drug must prominently state that the extra-label use of the product is prohibited. 21 U.S.C. 360ccc–l(h).

6. *Inventory.* Every DEA registrant who desires to possess any quantity of thiafentanil must take an inventory of thiafentanil on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

Any person who becomes registered with the DEA to handle thiafentanil must take an initial inventory of all stocks of controlled substances (including thiafentanil) on hand on the date the registrant first engages in the handling of controlled substances, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

After the initial inventory, every DEA registrant must take a new inventory of all stocks of controlled substances (including thiafentanil) on hand every two years, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

7. *Records and Reports.* Every DEA registrant must maintain records and submit reports for thiafentanil, or products containing thiafentanil, pursuant to 21 U.S.C. 827 and 958(e), and in accordance with 21 CFR parts 1304, 1312, and 1317.

8. *Orders for thiafentanil.* Every DEA registrant who distributes thiafentanil is required to comply with order form requirements, pursuant to 21 U.S.C. 828, and in accordance with 21 CFR part 1305.

9. *Prescriptions and other dispensing.* All prescriptions for thiafentanil or products containing thiafentanil must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C. Moreover, given that thiafentanil is not the subject of an approved new drug application under the FDCA, and that it is only allowed under the MUMS Act amendments to the FDCA to be marketed for extremely limited use in minor species, DEA would not consider any dispensing of thiafentanil for human use to be for a legitimate medical purpose within the meaning of the CSA. Likewise, DEA would not consider any dispensing of thiafentanil for animal use beyond the scope of the drug's labeling authorized under the MUMS Act amendments to the FDCA to be for a legitimate medical purpose within the meaning of the CSA.

10. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule II controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of thiafentanil may only be for the legitimate purposes consistent with the drug's labeling authorized under the MUMS Act, or for research activities authorized by the FDCA and CSA.

11. *Importation and Exportation.* All importation and exportation of thiafentanil must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

12. *Liability.* Any activity involving thiafentanil not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

Public Law 114–89 was signed into law, amending 21 U.S.C. 811. This amendment provides that in cases where a new drug is (1) approved or indexed by the Department of Health and Human Services (HHS) and (2) HHS recommends control in CSA schedule II–V, the DEA shall issue an interim final rule scheduling the drug within 90 days. Additionally, the law specifies that the rulemaking shall become immediately effective as an interim final rule without requiring the DEA to demonstrate good cause. Therefore, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action.

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review

In accordance with Public Law 114–89, this scheduling action is subject to formal rulemaking procedures performed "on the record after opportunity for a hearing," which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth the procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order 12866 and the principles reaffirmed in Executive Order 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of Executive Order 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), "[w]henever an agency is required by [5 U.S.C. 553], or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for an interpretive rule involving the internal revenue laws of the United States, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis." As noted in the above discussion regarding applicability of the Administrative Procedure Act, the DEA has determined that the notice and comment requirements of section 553 of the APA, 5 U.S.C. 553, do not apply to this scheduling action. Consequently, the RFA does not apply to this interim final rule.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, the DEA has determined and certifies that this action would not result in any Federal mandate that may result "in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted for inflation) in any one year." Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act (CRA)). This rule will not result in: An annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign based companies in domestic and export markets. However, pursuant to the CRA, the DEA has submitted a copy of this interim final rule to both Houses of Congress and to the Comptroller General.

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1305

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

For the reasons set out above, the DEA amends 21 CFR parts 1301, 1305 and 1308 as follows:

PART 1301—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

■ 1. The authority citation for 21 CFR part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 831, 871(b), 875, 877, 886a, 951, 952, 953, 956, 957, 958, 965.

■ 2. In § 1301.74, revise paragraph (g) to read as follows:

§ 1301.74 Other security controls for non-practitioners; narcotic treatment programs and compounders for narcotic treatment programs.

* * * * *

(g) Before the initial distribution of thiafentanil, carfentanil, etorphine hydrochloride and/or diprenorphine to any person, the registrant must verify that the person is authorized to handle the substance(s) by contacting the Drug Enforcement Administration.

* * * * *

■ 3. In § 1301.75, revise paragraph (e) to read as follows:

§ 1301.75 Physical security controls for practitioners.

* * * * *

(e) Thiafentanil, carfentanil, etorphine hydrochloride and diprenorphine shall be stored in a safe or steel cabinet equivalent to a U.S. Government Class V security container.

PART 1305—ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

■ 4. The authority citation for 21 CFR part 1305 continues to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b), unless otherwise noted.

■ 5. In § 1305.07, revise the introductory text and paragraph (a) to read as follows:

§ 1305.07 Special procedure for filling certain orders.

A supplier of thiafentanil, carfentanil, etorphine hydrochloride, or diprenorphine, if he or she determines that the purchaser is a veterinarian engaged in zoo and exotic animal practice, wildlife management programs, or research, and is authorized by the Administrator to handle these substances, may fill the order in accordance with the procedures set forth in § 1305.17 except that:

(a) A DEA Form 222 or an electronic order for thiafentanil, carfentanil, etorphine hydrochloride, and diprenorphine must contain only these substances in reasonable quantities.

* * * * *

■ 6. In § 1305.17, revise paragraph (d) to read as follows:

§ 1305.17 Preservation of DEA Forms 222.

* * * * *

(d) The supplier of thiafentanil, carfentanil, etorphine hydrochloride, and diprenorphine must maintain DEA Forms 222 for these substances separately from all other DEA Forms 222 and records required to be maintained by the registrant.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 7. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 8. In § 1308.12, add paragraph (c)(29) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(29) Thiafentanil 9729

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Dated: August 18, 2016.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2016–20463 Filed 8–25–16; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 232

[Docket ID: DOD–2013–OS–0133]

RIN 0790–ZA11

Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense.

ACTION: Interpretive rule.

SUMMARY: The Department of Defense (Department) is interpreting its regulation implementing the Military Lending Act (the MLA). The MLA as implemented by the Department, limits the military annual percentage rate (MAPR) that a creditor may charge to a maximum of 36 percent, requires certain disclosures, and provides other substantive consumer protections on "consumer credit" extended to Service members and their families. On July 22, 2015, the Department amended its regulation primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products (the July 2015 Final Rule). This interpretive rule provides guidance on certain questions the Department has received regarding compliance with the July 2015 Final Rule.

DATES: *Effective Date:* August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Marcus Beauregard, 571–372–5357.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

In July, 2015, the Department of Defense (Department) issued a final rule[1] (the July 2015 Final Rule) amending its regulation implementing the Military Lending Act (MLA)[2] primarily for the purpose of extending the protections of the MLA to a broader range of closed-end and open-end credit products, rather than the limited credit products that had been defined as "consumer credit."[3] Moreover, among other amendments, the July 2015 Final Rule modified provisions relating to the optional mechanism a creditor may use when assessing whether a consumer is a "covered borrower," modified the disclosures that a creditor must provide to a covered borrower, and implemented the enforcement provisions of the MLA.

Subsequently, the Department received requests to clarify its interpretation of points raised in the July 2015 Final Rule. The Department is issuing this interpretive rule to inform the public of its views. The Department has chosen to provide this guidance in the form of a question and answer document to assist industry in complying with the July 2015 Final Rule. This interpretive rule does not substantively change the regulation implementing the MLA, but rather merely states the Department's preexisting interpretations of an existing regulation. Therefore, under 5 U.S.C. 553(b)(A), this rulemaking is exempt from the notice and comment requirements of the Administrative Procedure Act, and, pursuant to 5 U.S.C. 553(d)(2), this rule is effective immediately upon publication in the **Federal Register**.

II. Interpretations of the Department

The following questions and answers represent official interpretations of the Department on issues related to 32 CFR part 232. For ease of reference, the following terms are used throughout this document: MLA refers to the Military Lending Act (codified at 10 U.S.C. 987); MAPR refers to the military annual percentage rate, as defined in 32 CFR 232.3(p); TILA refers to the Truth in Lending Act (codified at 15 U.S.C. 1601 *et seq.*); Regulation Z refers to the regulation, and interpretations thereof, issued by the Consumer Financial Protection Bureau (or the Board of Governors of the Federal Reserve System, as applicable) to implement TILA, as defined in 32 CFR 232.3(s); DMDC refers to the Defense Manpower Data Center.

1. What types of overdraft products are within the scope of 32 CFR 232.3(f) defining "consumer credit"?

Answer: The MLA regulation generally directs creditors to look to provisions of TILA and its implementing regulation, Regulation Z, in determining whether a product or service is considered "consumer credit" for purposes of the MLA.[4] Also, the supplementary information to the July 2015 Final Rule discusses coverage of overdraft products.

The MLA regulation defines "consumer credit" as credit offered or extended to a covered borrower primarily for personal, family or household purposes that is either subject to a finance charge or payable by a written agreement in more than four installments, with some exceptions. The exceptions include: Residential mortgage transactions; purchase money credit for a vehicle or personal property that is secured by the purchased vehicle or personal property; certain transactions exempt from Regulation Z (not including transactions exempt under 12 CFR 1026.29); and credit extended to non-covered borrowers consistent with 32 CFR 232.5(b). Although coverage by the MLA and the MLA regulation is not completely identical to that of TILA and Regulation Z, the July 2015 Final Rule amends the definition of consumer credit under the MLA to be more consistent with how credit is defined under TILA. The supplementary information to the July 2015 Final Rule states:

> As proposed, the Department is amending its regulation so that, in general, consumer credit covered under the MLA would be defined consistently with credit that for decades has been subject to TILA, namely: Credit offered or extended to a covered borrower primarily for personal, family, or household purposes, and that is (i) subject to a finance charge or (ii) payable by a written agreement in more than four installments.[5]

The MLA regulation also defines "closed-end credit" and "open-end credit" with express references to the definitions of the same terms in Regulation Z.

The supplementary information to the July 2015 Final Rule illustrates how to apply these standards specifically with respect to overdraft products and services.[6] It states that consistent with Regulation Z, an overdraft line of credit with a finance charge is a covered consumer credit product when: It is offered to a covered borrower; the credit extended by the creditor is primarily for personal, family, or household purposes; it is used to pay an item that overdraws an asset account and results in a fee or charge to the covered borrower; and, the extension of credit for the item and the imposition of a fee were previously agreed upon in writing. The supplementary information further states that other types of overdraft products not pursuant to a written agreement typically are not covered consumer credit "because Regulation Z excludes from 'finance charge' any charge imposed by a creditor for credit extended to pay an item that overdraws an asset account and for which the borrower pays any fee or charge, unless the payment of such an item and the imposition of the fee or charge were previously agreed upon in writing."[7]

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[1] 80 FR 435560.

[2] 10 U.S.C. 987.

[3] 32 CFR 232.3(b) as implemented in a final rule published at 72 FR 50580 (Aug. 31, 2007).

[4] The Department notes that the Consumer Financial Protection Bureau may from time to time revise Regulation Z. *See, e.g.,* 79 FR 77102 (Dec. 23, 2014) (proposing to revise the definition of finance charge with respect to charges imposed in connection with certain credit features offered in conjunction with prepaid card accounts). It is the Department's intention that this part should wherever possible be interpreted consistently with Regulation Z as it evolves in order to harmonize the two regulations and thereby minimize compliance burden.

[5] 80 FR 43563 (footnotes omitted).

[6] 80 FR 43579–43580.

Thus, whether or not a particular overdraft product or service is "consumer credit" under the MLA regulation depends on whether the product or service meets each element of the definition of "consumer credit" and whether an exception applies.

2. Does credit that a creditor extends for the purpose of purchasing personal property, which secures the credit, fall within the exception to "consumer credit" under 32 CFR 232.3(f)(2)(iii) where the creditor simultaneously extends credit in an amount greater than the purchase price?

Answer: No. Section 232.3(f)(1) defines "consumer credit" as credit extended to a covered borrower primarily for personal, family, or household purposes that is subject to a finance charge or payable by written agreement in more than four installments. Section 232.3(f)(2) provides a list of exceptions to paragraph (f)(1), including an exception for any credit transaction that is expressly intended to finance the purchase of personal property when the credit is secured by the property being purchased. A hybrid purchase money and cash advance loan is not expressly intended to finance the purchase of personal property, because the loan provides additional financing that is unrelated to the purchase. To qualify for the purchase money exception from the definition of consumer credit, a loan must finance only the acquisition of personal property. Any credit transaction that provides purchase money secured financing of personal property along with additional "cash-out" financing is not eligible for the exception under § 232.3(f)(2)(iii) and must comply with the provisions set forth in the MLA regulation.

3. Under 32 CFR 232.4(b), are creditors permitted to waive fees or periodic charges at the end of a billing cycle or earlier for open-end credit, in order to prevent a borrower from being assessed a military annual percentage rate (MAPR) in excess of 36 percent during that billing cycle?

Answer: Yes. Section 232.4(b) requires that a creditor may not impose an MAPR greater than 36 percent in connection with an extension of consumer credit that is closed-end credit or in any billing cycle for open-end credit. In an open-end credit account, a covered borrower's use of a line of credit might, under certain circumstances, give rise to the imposition of a combination of fees and/or periodic charges that would cause the MAPR to exceed the limit in § 232.4(b). A creditor can comply with § 232.4(b) by designing a combination of periodic rates and fees that cannot possibly result in an MAPR greater than 36 percent. Nevertheless, nothing in 32 CFR part 232 prohibits a creditor from complying by waiving fees or finance charges, either in whole or in part, in order to reduce the MAPR to 36 percent or below in a given billing cycle. Thus, a creditor could alternatively comply by not imposing charges in excess of 36 percent MAPR that would otherwise be permitted under the credit agreement.

4. Are fees that a creditor is required to pay by law and passes through to a covered borrower required to be included in the calculation of the MAPR?

Answer: 32 CFR 232.4(c)(1) details the charges that must be included in the calculation of the MAPR. Among the charges that must be included are finance charges associated with the consumer credit. Finance charges are defined by § 232.3(n) to mean a "finance charge" in Regulation Z. If such fees are considered "finance charges" under Regulation Z, then such fees must be included in the calculation of the MAPR, unless they are bona fide fees charged to a credit card account that are excludable under § 232.4(d). However, if the fees are not "finance charges" under Regulation Z, then they may be excluded from the calculation of the MAPR, provided they do not qualify for any of the other categories of charges listed under § 232.4(c)(1).

5. For open-end credit, what constitutes a situation where the MAPR cannot be calculated because there is "no balance" in the billing cycle under 32 CFR 232.4(c)(2)(ii)(B)?

Answer: Section 232.4(c)(2)(ii)(B) specifically provides that for open-end credit, if the MAPR cannot be calculated in a billing cycle because there is "no balance" in the billing cycle, a creditor may not impose any fee or charge during that billing cycle, except for a participation fee that complies with the limitations set forth in § 232.4(c)(2)(ii)(B). Because the provision is tied to whether the MAPR can be calculated based on whether there is a balance in the billing cycle, creditors that impose fees or charges that are excluded from the calculation of the MAPR during a particular billing cycle are not subject to the limitations in § 232.4(c)(2)(ii)(B) for that billing cycle, as there would be no MAPR to calculate whether or not there was a balance during the billing cycle. For example, if a creditor charged a late fee for a late payment in accordance with its credit agreement with the covered borrower and in compliance with Regulation Z, the creditor may charge the fee, regardless of whether there is a balance in the billing cycle, because a late fee is not among the charges that are included in the calculation of the MAPR.

Furthermore, § 232.4(c)(2)(ii)(A) states that the MAPR shall be calculated following the rules set forth in 12 CFR 1026.14(c) and (d) of Regulation Z. Thus, the reference in § 232.4(c)(2)(ii)(B) to a situation in which the MAPR cannot be calculated in a billing cycle, because there is no balance, relates solely to the situation like the one described in 12 CFR 1026.14(c)(2), which is the only provision in 12 CFR 1026.14(c) and (d) that describes the inability to calculate an effective annual percentage rate when there is no balance in the billing cycle. 12 CFR 1026.14(c)(2) discusses how to compute an effective annual percentage rate when the charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle. Under 12 CFR 1026.14(c)(2), if there is no balance to which the charge is applicable, an effective annual percentage rate cannot be determined under the section. Similarly, § 232.4(c)(2)(ii)(B) relates to when finance charge imposed during the billing cycle is or includes a minimum, fixed or other charge not due to the application of a periodic rate, other than a charge with respect to a specific transaction charge, and there is no balance to which the charge is applicable.

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[7] 80 FR 43580.

6. Is a minimum interest charge that a creditor may charge a covered borrower as part of a credit card account under an open-end (not home-secured) consumer credit plan and that is generally disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii) eligible as a bona fide fee excludable from the calculation of the MAPR?

Answer: Yes. 32 CFR 232.4(d)(1) provides that for consumer credit extended in a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR, provided it is a bona fide fee and reasonable for that type of fee. A minimum interest charge that a creditor will charge a covered borrower if the creditor charges interest during a particular billing cycle for a credit card account under an open-end (not home-secured) consumer credit plan is generally required to be disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii). Such a charge is not a periodic rate. Furthermore, neither of the categories of fees that are ineligible for the exclusion for bona fide fees (credit insurance premiums and fees for a credit-related ancillary product) applies to this type of charge. Consequently, a minimum interest charge that is generally disclosed in the account-opening table under 12 CFR 1026.6(b)(2)(iii) (even if it does not exceed the threshold for required disclosure in the account-opening table under 12 CFR 1026.6(b)(2)(iii)) may be a bona fide fee excludable from the calculation of the MAPR if it meets the conditions for exclusion.

7. Under 32 CFR 232.4(d)(3)(ii), may creditors rely on commercially compiled sources of information in conducting calculations necessary for the conditional reasonable bona fide credit card fee safe harbor?

Answer: Generally, yes. The July 2015 Final Rule intends to provide a firm, yet flexible, adaptable standard allowing credit card issuers to exclude bona fide and reasonable credit card fees from the calculation of the MAPR. Under the safe harbor set forth in § 232.4(d)(3)(ii), creditors are allowed to exclude a reasonable bona fide fee charged to a credit card account from the calculation of the MAPR, where that fee is less than or equal to an average amount of a fee for the same or a substantially similar product or service charged by 5 or more creditors, each of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed. As the Department stated in the supplementary information to the July 2015 Final Rule, the Department believes that information on credit card fees imposed by large credit card issuers is widely available. Moreover, the Department stated in the supplementary information to the July 2015 Final Rule that the amount of outstanding credit card loans is available in both Securities and Exchange Commission filings as well as Call Reports. Nevertheless, nothing in 32 CFR part 232 prohibits a credit card issuer from relying on information sources compiled in commercially available databases or other industry sources in making safe harbor calculations. However, the safe harbor under § 232.4(d)(3)(ii) is available only if the amount of the fee is actually less than or equal to an average amount of a fee for the same or a substantially similar product or service charge by 5 or more creditors each, of whose U.S. credit cards in force is at least $3 billion in an outstanding balance (or at least $3 billion in loans on U.S. credit card accounts initially extended by the creditor) at any time during the 3-year period preceding the time such average is computed.

8. Under 32 CFR 232.4(d), is it permissible to consider benefits provided by credit card rewards programs in determining whether the amount of a fee is (a) less than or equal to an average amount of a fee for a substantially similar product or service for purposes of comparison under the safe harbor and (b) reasonable overall?

Answer: Generally, yes. Section 232.4(d)(1) provides that for a credit card account under an open-end (not home-secured) consumer credit plan, a bona fide fee, other than a periodic rate, is not a charge required to be included in the MAPR, provided it is a bona fide fee and reasonable for that type of fee. Under § 232.4(d)(3)(i), whether a fee is reasonable is determined by comparison to fees typically imposed by other creditors for the same or a substantially similar product or service. Under § 232.4(d)(3)(iii), whether a fee is reasonable depends on other factors relating to the credit card account. Section 232.4(d)(3)(iv) further clarifies that whether a participation fee is reasonable may be determined in reference to whether a credit card offers additional services or other benefits. Moreover, the supplementary information to the July 2015 Final Rule explains that "the 'reasonable' condition for a bona fide fee is intended to be applied flexibly so that, in general, creditors may continue to offer a wide range of credit card products that carry reasonable costs expressly tied to specific products or services and which vary depending upon the covered borrower's own choices regarding the use of the card." [8]

Under the Department's flexibly applied conditional exclusion, creditors may use any reasonable approach in identifying whether a fee is substantially similar for purposes of comparison and reasonable overall. Thus, the Department's policy, in this regard, permits a creditor to consider whether the benefits provided by a rewards program in determining whether a fee is reasonable overall. Moreover, creditors may consider rewards program benefits in determining whether the amount of a fee is less than or equal to an average amount of a fee for a substantially similar product or service for purposes of the safe harbor in § 232.4(d)(3)(ii).

9. Under 32 CFR 232.5(b), is an assignee permitted to avail itself of a covered borrower identification safe harbor if the assignee has maintained the original creditor's record of a covered borrower check?

Answer: Yes. Under § 232.5(b) a creditor may conclusively determine whether credit is offered or extended to a covered borrower by assessing the status of a credit applicant, in accordance with the methods for checking the status of consumers discussed in § 232.5(b)(2). A creditor's timely covered borrower check is legally conclusive, so long as the creditor creates and thereafter maintains a record of the consumer's covered borrower status. Under § 232.3(i)(2) a creditor, by definition, includes the creditor's assignee. Thus, the Department's policy is to extend the covered borrower check safe harbor to a creditor's assignee, provided that the assignee continues to maintain the record created by the creditor that initially extended the credit.

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[8] 80 FR 43585 (Jul. 22, 2015).

10. Does the historic lookback provision of 32 CFR 232.5(b)(2)(B) prevent creditors from adopting a risk management plan that includes periodically screening credit portfolios to discover changes to covered borrower status?

Answer: No. Section 232.5 explains the methods available to creditors when determining a consumer's covered borrower status prior to or at the time the parties enter into a transaction or an account is created. The provision permits a creditor to use its own method to assess covered borrower status, and it provides a safe harbor to a creditor that employs either of two available methods: Using information obtained directly or indirectly from the DMDC database; or obtaining a consumer report from a nationwide consumer reporting agency (or a reseller of the same) containing a statement, code, or similar indicator describing that status. To benefit from the safe harbor provision, a creditor must determine a consumer's covered borrower status at or before the time of the transaction or the time an account is established and make a record of the determination. Section 232.5(b)(2)(B) prohibits a creditor from accessing the DMDC database after the time a consumer entered into a transaction or established an account for a specific purpose, namely "to ascertain whether a consumer had been a covered borrower as of the date of that transaction or as of the date that account was established." Therefore, the plain language of the regulation does not prohibit a creditor or assignee from accessing the DMDC database for other purposes, such as determining whether a previously covered borrower retains that status. However, as stated in § 232.7, other State or Federal laws providing greater protections to covered borrowers may apply to covered transactions under the MLA. Creditors should ensure compliance with any such laws that may apply to them and these transactions.

11. Does the particular internet address referenced in 32 CFR 232.5(b)(2) limit the availability of a safe harbor for a covered borrower check conducted through alternative methods of accessing the MLA database provided by the Department?

Answer: No. Under the safe harbor provided in § 232.5(b)(1), a creditor may conclusively determine whether credit is offered to a covered borrower by assessing the status of a consumer using information related to that consumer obtained from the database, maintained by the DMDC, for that purpose. Section 232.5(b)(2) references a uniform resource locator (URL), more commonly known as an Internet address, as a convenience to assist the public in locating the DMDC MLA database. However, that particular URL address itself does not serve as a restriction on the method through which the DMDC MLA database is accessed. For technological reasons, the Department may from time to time revise the DMDC MLA URL through providing notice on the DMDC MLA Web page. Therefore, a creditor who makes a determination regarding the status of a consumer by accessing the database maintained by the DMDC through a URL provided by the DMDC that is different from the one specifically referenced in § 232.5(b)(2) may still take advantage of the safe harbor in § 232.5(b)(1), so long as the creditor timely creates and thereafter maintains a record of the information so obtained as provided in § 232.5(b)(3).

Furthermore, the Department is currently developing a pilot project in collaboration with several financial service providers that anticipate a large volume of covered borrower checks. In this pilot project, the Department is experimenting with a direct connection that may improve access to the DMDC database for the financial services industry. This direct connection pilot project accesses the same DMDC database available through an internet query. A creditor may verify the status of a consumer by using the database maintained by the Department for that purpose, even though the creditor uses a method of accessing that database provided by the Department other than the particular URL listed in § 232.5(b)(2). Thus, a creditor who makes a determination regarding the status of a consumer under § 232.5(b)(2) by participating in the Department's direct connection pilot project (or a similar form of access should it be provided by the Department at a future date) is deemed conclusive with respect to that transaction or account involving consumer credit between the creditor and that consumer, so long as that creditor timely creates and thereafter maintains a record of the information so obtained as provided in § 232.5(b)(3).

12. How may a creditor orally provide the payment obligation disclosure required under 32 CFR 232.6(a)(3) to meet the requirements of 32 CFR 232.6(d)(2)?

Answer: Section 232.6(a)(3) requires a creditor to provide to a covered borrower, before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit, a clear description of the payment obligation of the covered borrower, as applicable. A payment schedule (in the case of closed-end credit) or an account-opening disclosure (in the case of open-end credit) provided pursuant to the requirement to provide Regulation Z disclosures satisfies this obligation. Therefore, a creditor may orally provide the information in a payment schedule or an account-opening disclosure to a covered borrower. However, an oral recitation of the payment schedule or the account-opening disclosure is not the only way a creditor may comply with § 232.6(a)(3). A creditor may also orally provide a clear description of the payment obligation of the covered borrower by providing a general description of how the payment obligation is calculated or a description of what the borrower's payment obligation would be based on an estimate of the amount the borrower may borrow. For example, a creditor could generally describe how minimum payments are calculated on open-end credit plans issued by the creditor and then refer the covered borrower to the written materials the borrower will receive in connection with opening the plan. Alternatively, a creditor could choose to generally describe borrowers' obligations to make a monthly, bi-monthly, or weekly payment as the case may be under the borrowers' agreements.

Neither the MLA nor the MLA regulation specifies particular content or format for the requirement of a clear, oral description of the payment obligation. Also, nothing in the MLA or the MLA regulation requires that the clear description of the payment obligation provided in writing must be the same as the oral disclosure, provided that both disclosures are clear and accurate. As explained in the supplementary information to the Department's July 2015 Final Rule, the Department's approach has been to interpret the MLA's oral disclosure requirement in a manner that provides creditors "straightforward mechanisms" that afford "latitude to develop the same (or consistent) systems to orally provide the required disclosures—regardless of the particular context . . ."[9] The requirement of a clear, oral payment obligation disclosure has sufficient breadth that creditors may choose a variety of acceptable oral disclosure compliance strategies. Thus, under the Department's approach, a generic oral description of the payment obligation may be provided, even though the disclosure is the same for borrowers with a variety of consumer credit transactions or accounts.

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[9] 80 FR 43588.

13. If a creditor chooses to provide the information that is required to be provided orally by providing a toll-free telephone number, consistent with 32 CFR 232.6(d)(2)(ii)(B), when must the information be available to the borrower?

Answer: Section 232.6(d)(2) requires a statement of the MAPR and a clear description of the covered borrower's payment obligation to be provided to the covered borrower orally. Creditors may satisfy this requirement by providing the information to the covered borrower in person or through a toll-free telephone number. If the creditor decides to provide the borrower with a toll-free telephone number, the toll-free telephone number must be provided on i) a form the creditor directs the consumer to use to apply for the transaction or account, or ii) the written disclosure of the information that is required under § 232.6(d)(1). Since § 232.6(d)(2) permits creditors to provide oral disclosures by providing a toll-free telephone number, such information must be available from the time the creditor provides the toll-free telephone number. The difficulty of providing this information in a timely way through a toll-free telephone system is mitigated by the Department's interpretation of mandatory oral disclosures as allowing for a nonnumeric statement of the MAPR and a generic, clear description of the payment obligation. *See* § 232.6(c) and Question and Answer #12 of these Interpretations. Oral disclosures provided through a toll-free telephone system need only be available under § 232.6(d)(2)(ii)(B) for a duration of time reasonably necessary to allow a covered borrower to contact the creditor for the purpose of listening to the disclosure.

14. In circumstances where Regulation Z allows a creditor to provide disclosures after the borrower has become obligated on a transaction (as in the case of purchase orders or requests for credit made by mail, telephone, or fax), does the MLA provide for similarly delayed disclosure?

Answer: Yes. 32 CFR 232.6(a) states that a creditor shall provide mandatory loan disclosures, including "any disclosure required by Regulation Z," to a covered borrower "before or at the time the borrower becomes obligated on the transaction or establishes an account for the consumer credit. . ." Section 232.6(a)(2) further states that "any disclosure required by Regulation Z . . . shall be provided only in accordance with the requirements of Regulation Z that apply to that disclosure..." In certain instances Regulation Z allows a creditor to provide a disclosure after the borrower has become obligated on a transaction, as in the case of purchase orders or requests for credit made by mail, telephone, or fax under 12 CFR 1026.17(g). The MLA regulation's general timing requirement does not override more specific disclosure timing provisions in Regulation Z. The requirement in § 232.6(a) that any disclosure required by Regulation Z be provided only in accordance with the requirements of Regulation Z does not amount to a requirement that MLA-specific disclosures be separately provided to borrowers in advance of TILA disclosures. Thus, the disclosures required in § 232.6(a) may be provided at the time prescribed in Regulation Z.

15. Under 32 CFR 232.8, within a single credit agreement may creditors permissibly use a "savings clause" that excludes covered borrowers from prohibited notice, waiver, arbitration, or other terms that would otherwise be applicable to non-covered borrowers?

Answer: Yes. Section 232.8 makes it unlawful for any creditor to extend consumer credit in which the credit agreement imposes on a covered borrower a proscribed term or provision listed in § 232.8. However, nothing in the MLA regulation restricts the ability of creditors to impose on non-covered borrowers those provisions proscribed under § 232.8 for covered borrowers. Along these lines, the supplementary information in the July 2015 Final Rule explains that the Department "recognizes that many creditors likely would adopt disclosures and contract documents that would be designed to be provided to both consumers who are not entitled to the protections under the MLA and to covered borrowers."[10] Under the MLA, a creditor may include a proscribed term under § 232.8, such as a mandatory arbitration clause, within a standard written credit agreement with a covered borrower, provided that the agreement includes a contractual "savings" clause limiting the application of the proscribed term to only non-covered borrowers, consistent with any other applicable law.

16. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit the borrower from repaying a credit transaction by check or electronic fund transfer?

Answer: No. As a general proposition the prohibition of a creditor's use of a check or other method of access in § 232.8(e) does not in any way imply that a creditor cannot be paid. In no case does paragraph (e) prevent *covered borrowers* from tendering a check or authorizing access to a deposit, savings, or other financial account to repay a creditor. Section 232.8(e) also does not prohibit a covered borrower from authorizing automatically recurring payments, provided that such recurring payments comply with other laws, such as the Electronic Fund Transfer Act and its implementing regulations, including 12 CFR 1005.10, as applicable.

In contrast, § 232.8(e) prohibits a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower. Similarly, a creditor may not use a post-dated check provided at or around the time credit is extended that deprives the borrower of control over payment decisions, as is common in certain payday lending transactions.

Section 232.8(e)(1) and (2) further clarify that covered borrowers may tender checks and authorize electronic fund transfers by specifying permissible actions creditors may take to secure repayment by covered borrowers. The exceptions address cases where a creditor requires a covered borrower to provide repayment in a certain way. Specifically, under § 232.8(e)(1), a creditor may require an electronic fund transfer to repay a consumer credit transaction, unless otherwise prohibited by law. The Department notes that 12 CFR 1005.10(e)(1) prohibits anyone from conditioning an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers (except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account). However, a preauthorized electronic fund transfer is defined under 12 CFR 1005.2(k) as an electronic fund transfer authorized in advance to *recur* at substantially regular intervals.

In addition, § 232.8(e)(2) clarifies that a creditor is permitted to require direct deposit of the consumer's salary as a condition of eligibility for consumer credit, unless otherwise prohibited by law. While § 232.8(g) prohibits a creditor from requiring as a condition for the extension of consumer credit that the covered borrower establish an allotment to repay an obligation, the regulation does not apply this restriction to a "military welfare society" or a "service relief society" as defined in 37 U.S.C. 1007(h)(4).

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[10] 80 FR 43587 n. 238.

17. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit the borrower from granting a security interest to a creditor in the covered borrower's checking, savings or other financial account?

Answer: No. The prohibition in § 232.8(e) does not prohibit covered borrowers from granting a security interest to a creditor in the covered borrower's checking, savings, or other financial account, provided that it is not otherwise prohibited by applicable law and the creditor complies with the MLA regulation including the limitation on the MAPR to 36 percent. As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) prohibits a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower or using a post-dated check provided at or around the time credit is extended.

Section 232.8(e)(3) further clarifies that covered borrowers may convey security interests in checking, savings, or other financial accounts by describing a permissible security interest granted by covered borrowers. Thus, for example, a covered borrower may grant a security interest in funds deposited in a checking, savings, or other financial account after the extension of credit in an account established in connection with the consumer credit transaction.

18. Does the limitation in § 232.8(e) on a creditor using a check or other method of access to a deposit, savings, or other financial account maintained by the covered borrower prohibit a creditor from exercising a statutory right to take a security interest in funds deposited within a covered borrower's account?

Answer: No. Under certain circumstances federal or state statutes may grant creditors statutory liens on funds deposited within covered borrowers' asset accounts. For example, under 12 U.S.C. 1757(11) federal credit unions may "enforce a lien upon the shares and dividends of any member, to the extent of any loan made to him and any dues or charges payable by him." As discussed in Question and Answer #16 of these Interpretations, § 232.8(e) serves to prohibit a creditor from using the borrower's account information to create a remotely created check or remotely created payment order in order to collect payments on consumer credit from a covered borrower or using a post-dated check provided at or around the time credit is extended. Section 232.8(e)(3) describes a permissible activity under § 232.8(e). However, the fact that § 232.8(e)(3) specifies a particular time when a creditor may take a security interest in funds deposited in an account does not change the general effect of the prohibition in § 232.8(e). Therefore, § 232.8(e) does not impede a creditor from exercising a statutory right to take a security interest in funds deposited in an account at any time, provided that the security interest is not otherwise prohibited by applicable law and the creditor complies with the MLA regulation, including the limitation on the MAPR to 36 percent.

19. Under 32 CFR 232.3(f)(2)(ii) and 232.8(f) what methods of transportation are included within the definition of a "vehicle"?

Answer: For purposes of the MLA, the term "vehicle" means any self-propelled vehicle primarily used for personal, family, or household purposes for on-road transportation. The term does not include motor homes, recreational vehicles (RVs), golf carts, or motor scooters.

III. Regulatory Impact

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this is not a significant rule. This interpretive rule will not have an annual effect of $100 million or more on the economy, or adversely affect productivity, competition, jobs, the environment, public health or safety, or State or local governments. This rulemaking will not interfere with an action taken or planned by another agency, or raise new legal or policy issues. Finally, this rulemaking will not alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

2 U.S.C. Ch. 25, "Unfunded Mandates Reform Act"

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532) requires agencies to assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that threshold is approximately $141 million. This rule will not mandate any requirements for State, local, or tribal governments, nor will it affect private sector costs.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Ch. 6)

The Department of Defense certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

This rule does not impose reporting and record keeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

This rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). It has been determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this rule preempts any State law or regulation. Therefore, Department did not consult with State and local officials because it was not necessary.

Dated: August 23, 2016.

Morgan Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–20486 Filed 8–25–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0783]

Drawbridge Operation Regulation; Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the S213 (MD 213) Bridge across the Chester River, mile 26.8, at Chestertown, MD. The deviation is necessary to facilitate bridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective 8 p.m. on Tuesday, September 6, 2016 to 6 a.m. on Sunday, October 30, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0783] is available at *http://www.regulations.gov.* Type the docket number in the “SEARCH” box and click “SEARCH”. Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Maryland State Highway Administration, who owns and operates the S213 (MD 213) Bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.551, to facilitate painting of the bridge.

Under this temporary deviation, the bridge will be in the closed-to-navigation position from 8 p.m. September 6, 2016 to 6 a.m. October 30, 2016. The bridge is a double bascule drawbridge and has a vertical clearance in the closed-to-navigation position of 12 feet above mean high water.

The Chester River is used by recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

For the duration of the bridge maintenance, vessels will not be allowed to pass through the bridge due to placement of barges and equipment in the main navigation span. The bridge will open for vessels on signal during the scheduled closure periods, if at least 24 hours notice is given. The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels to pass. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 19, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–20482 Filed 8–25–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0804]

Safety Zone; Portland Dragon Boat Races, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce its Portland Dragon Boat Races safety zone regulations on September 10 and 11, 2016. Our regulations for this safety zone identifies the regulated area for this event. During the enforcement period, no person or vessel may enter or remain in the safety zone without permission from the Sector Columbia River Captain of the Port.

DATES: The regulations in 33 CFR 165.1341 will be enforced from 8 a.m. to 6 p.m., on both September 10, 2016, and September 11, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Ken Lawrenson, Waterways Management Division, MSU Portland, U.S. Coast Guard; telephone 503–240–9319, email *MSUPDXWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Portland Dragon Boat Races detailed in 33 CFR 165.1341 from 8 a.m. to 6 p.m., on both Saturday, September 10, 2016, and Sunday, September 11, 2016. This action is necessary to ensure the safety of maritime traffic, including public vessels present, on the Willamette River during the Portland Dragon Boat Races. Our regulations for the Portland Dragon Boat Races in § 165.1341 specify the location of the regulated area for this event. Under the provisions of 33 CFR 165.1341 and 33 CFR part 165, subpart C, no person or vessel may enter or remain in the safety zone without permission from the Sector Columbia River Captain of the Port. Persons or vessels wishing to enter the safety zone may request permission to do so from the on-scene Captain of the Port representative via VHF Channel 16 or 13. The Coast Guard may be assisted by other Federal, State, or local enforcement agencies in enforcing this regulation.

This notice of enforcement is issued under the authority of 33 CFR 165.1341 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: August 22, 2016.

W. R. Timmons,

Captain, U.S. Coast Guard, Captain of the Port Sector Columbia River.

[FR Doc. 2016–20480 Filed 8–25–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–1030]

RIN 1625–AA87

Security Zone; Kailua Bay, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone for the protection of a very important person (VIP). This VIP will be staying on beachfront property in close proximity to Kailua Bay. It is necessary to restrict waterway access to vessels and persons to prevent waterside threats

to the VIP. The security zone encompasses two primary areas from the surface of the water to the ocean floor from the navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. Entry of persons or vessels into the security zone is prohibited unless authorized by the Captain of the Port (COTP) Honolulu or a designated representative.

DATES: This rule is effective from 4:00 p.m. (HST) on August 30, 2016, through 11:30 p.m. (HST) on September 2, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2015–1030. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2015–1030 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Nicolas Jarboe, Waterways Management Division, U.S. Coast Guard Sector Honolulu; telephone (808) 541–4359, email *Nicolas.a.jarboe@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
TFR	Temporary final rule
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
VIP	Very Important Person

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) [5 U.S.C. 553(b)]. This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds those procedures are "impractical, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard further finds that it would be impractical to issue an NPRM with respect to this rule because details of the VIP's travel to Hawaii were not provided to the Coast Guard until August 9, 2016, preventing the Coast Guard from completing full notice-and-comment rulemaking procedures. Publishing an NPRM and delaying the effective date would be contrary to the security zone's intended objectives, including but not limited to protection of the VIP, mitigation of potential terrorist risks, and enhancing public and maritime security. Publishing a Notice of Proposed Rulemaking (NPRM) and delaying the effective date would be contrary to the public interest since the occasion would occur before a notice-and-comment rulemaking could be completed, thereby jeopardizing the safety of the VIP. The COTP finds this temporary security zone must be effective by August 30, 2016 to ensure the safety of the VIP during his visit to the Kailua Bay area on the eastern coast of Oahu, Hawaii.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority in 33 U.S.C. 1231. From August 30, 2016 through September 2, 2016, a VIP of the United States of America plans to visit the Kailua Bay area on Oahu, Hawaii. The security zone encompasses two primary areas from the surface of the water to the ocean floor: (1) The navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and (2) the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. The Captain of the Port of Honolulu (COTP) has determined the potential risks associated with the VIP's visit to the Kailua Bay area render a security zone necessary to ensure the VIP's safety. Entry of persons or vessels into the security zone is prohibited unless authorized by the Captain of the Port (COTP) Honolulu or a designated representative.

IV. Discussion of Comments, Changes, and the Rule

This temporary final rule establishes a security zone from 4:00 p.m. (HST) on August 30, 2016, through 11:30 p.m. (HST) on September 2, 2016. The security zone encompasses two primary areas from the surface of the water to the ocean floor: (1) The navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and (2) the navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734.

Two (2) shore-side markers will be placed in proximity of the security zone along the security zone boundary and one (1) orange boom will be placed at the canal boundary south of the N. Kalaheo Avenue Road Bridge as visual aids for mariners and public to approximate the zone. An illustration of the security zone will be made available on *www.regulations.gov* in the docket for this rulemaking, USCG–2015–1030. No vessel or person will be permitted to enter the security zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Coast Guard expects the economical impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the limited duration of the zone, the limited geographic area affected by it, and the lack of commercial vessel traffic affected by the zone. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the security zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T14–1030 to read as follows:

§ 165.T14–1030 Security Zone; Kailua Bay, Oahu, HI.

(a) *Location.* The security zone area is located within the Captain of the Port (COTP) Zone (See 33 CFR 3.70–10) and encompasses two primary areas from the surface of the water to the ocean floor:

(1) The navigable waters of the Kawainui Canal, beginning 150 yards south of the N. Kalaheo Avenue Road Bridge and continuing into Kailua Bay; and

(2) The navigable waters of Kailua Bay beginning at Kapoho Point and extending in a southwesterly direction to the shore boundary of a property located at 123 Kailuana Loop, Kailua, HI 96734. The geographic coordinates of the zone include the navigable waters of the Kawainui Canal beginning at a point 21°24′56″ N., 157°44′58″ W., then extending to 21°25′27″ N., 157°44′21″ W. (Kapoho Point) including all the waters to the west of a straight line to 21°25′11″ N., 157°44′39″ W., and extending back to the original point 21°24′56″ N., 157°44′58″ W.

(b) *Effective period.* This rule is effective from 4:00 p.m. (HST) on August 30, 2016, through 11:30 p.m. (HST) on September 2, 2016.

(c) *Regulations.* The general regulations governing security zones contained in § 165.33 apply to the security zone created by this temporary final rule.

(1) All persons and vessels are required to comply with the general regulations governing security zones found in this part.

(2) Entry into or remaining in this zone is prohibited unless authorized by the COTP or his designated representative.

(3) Persons or vessels desiring to transit the security zone identified in paragraph (a) of this section may contact the COTP through his designated representatives at the Command Center via telephone: (808) 842–2600 and (808) 842–2601; fax: (808) 842–2642; or on VHF channel 16 (156.8 Mhz) to request permission to transit the zones. If permission is granted, all persons and vessels must comply with the

instructions of the COTP or his designated representative and proceed at the minimum speed necessary to maintain a safe course while in the zone.

(4) The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by Federal, State, and local agencies.

(d) *Notice of enforcement.* The COTP will cause notice of the enforcement of the security zone described in this section to be made by verbal broadcasts and written notice to mariners and the general public.

(e) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to assist in enforcing the security zone described in paragraph (a) of this section.

Dated: August 16, 2016.

M.C. Long,

Captain, U.S. Coast Guard, Captain of the Port, Honolulu.

[FR Doc. 2016–20530 Filed 8–25–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0402; FRL–9945–13–Region 1]

Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for Particle Matter, Ozone, Lead, Nitrogen Dioxide and Sulfur Dioxide

Correction

In rule document 2016–08913, appearing on pages 23175–23180 in the issue of Wednesday, April 20, 2016, make the following correction:

On page 23177, in the first column, in the first paragraph following the table, lines 1–23, should read as follows:

In the above table, the key is as follows:

A	Approve
A*	Approve, but conditionally approve aspect of PSD program relating to the identification of NO_X as a precursor for ozone and addressing the changes made to 40 CFR part 51.116 in EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate.
D	Disapprove, but no further action required because federal regulations already in place.
+	Not germane to infrastructure SIPs.
NI	Not included in the September 10, 2008 ($PM_{2.5}$), January 2, 2013 (ozone and NO_2), and May 30, 2013 (SO_2) submittals which are the subject of today's action.
NT	Not taking action in today's action.
NS	No Submittal.
NA	Not applicable.

[FR Doc. C1–2016–08913 Filed 8–25–16; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2016–0320; FRL–9951–49–Region 2]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; New York; Interstate Transport Infrastructure SIP Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is partially approving and partially disapproving elements of a New York State Implementation Plan (SIP) submittal pertaining to the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions.

DATES: This rule is effective on September 26, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2016–0320. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Kenneth Fradkin, 212–637–3702, *fradkin.kenneth@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we", "us", and "our" means EPA.

I. Background
II. What action did EPA propose on the SIP submission?
III. What comments did EPA receive in response to its proposal?
IV. What action is EPA taking?
V. What are the consequences of a disapproved SIP?
VI. Statutory and Executive Order Reviews

I. Background

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in New York's infrastructure SIP submitted on April 4, 2013 to address applicable infrastructure requirements with respect to the 2008 ozone NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions "within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)," and these SIP submissions are to provide for the "implementation, maintenance, and enforcement" of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that "[e]ach such plan" submission must address. EPA commonly refers to such state plans as "infrastructure SIPs." In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (commonly referred to as prong 1), or interfering with maintenance of the NAAQS (prong 2), in any another state. Section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (prong 3) and to protect visibility (prong 4) in another state. This rulemaking addresses prongs 1, 2, and 4 of CAA section 110(a)(2)(D)(i). EPA will address the other portions of the April 4, 2013 infrastructure SIP submittal, including prong 3 pertaining to CAA section 110(a)(2)(D)(i)(II), in another action.

II. What action did EPA propose on the SIP submission?

The proposed rulemaking associated with this final action was published on June 21, 2016 (81 FR 40229). In that action, EPA proposed to disapprove the portions of New York's April 4, 2013

SIP submission addressing prongs 1 and 2, and proposed to approve prong 4 regarding CAA section 110(a)(2)(D)(i) requirements.

In proposing to disapprove the SIP submission as to prongs 1 and 2, EPA noted several deficiencies in New York's submission: (1) New York's own modeling showed "predicted" nonattainment in the bordering states of Connecticut, New Jersey, and Pennsylvania, but did not adequately explain its conclusion that New York emissions will not significantly contribute to those predicted exceedances; (2) the emissions reductions cited in New York's submission were based on preliminary emissions estimates, and were below the assumed emissions reductions that were used in New York's cited preliminary screening modeling performed for the Ozone Transport Commission; (3) the submission used a projection year (2020) to model downwind air quality that is two years beyond the July 11, 2018 moderate area attainment date for the 2008 ozone NAAQS; (4) the submission failed to address prong 2, the State's potential interference with maintenance of the 2008 ozone NAAQS in other states; (5) the submission did not demonstrate that the emission rates at which Electric Generating Units (EGUs) in the state operated were the result of enforceable emission limits or other mandatory programs such that the emission rate would not increase; (6) New York's submission relied on the state's implementation of the Clean Air Interstate Rule (CAIR), which was not designed to address interstate transport with respect to the 2008 ozone standard and is no longer being implemented by the states and EPA; and (7) EPA recently released technical data that contradicts the State's conclusion that its SIP already contains adequate provisions to meet interstate transport requirements with respect to the 2008 ozone NAAQS.

In proposing to approve the New York SIP submission with respect to the prong 4 visibility transport requirements under CAA section 110(a)(2)(i)(II), EPA explained that New York's SIP submission relied on the State's approved Regional Haze SIP to ensure that emissions from sources within the State were not interfering with measures to protect visibility in other states.

III. What comments did EPA receive in response to its proposal?

We received comments during the public comment period on our proposed action from the New York State Department of Environmental Conservation (NYSDEC), the State of Connecticut Department of Energy and Environmental Protection (DEEP), and the Environmental Energy Alliance of New York, LLC (the Alliance). A synopsis of the comments and our responses are below.

Comment 1: The NYSDEC stated that EPA is proposing to replace New York's "supposedly deficient" plan with a partial remedy that controls fewer units at less stringency. NYSDEC further states that EPA is proposing to disapprove a plan based in part on a NO_X regulation that covers EGUs as well as non-EGU source categories at a $5,000 per ton control cost threshold, and replace it with a program that covers only EGUs at a $1,300 per ton control cost threshold. NYSDEC also states that EPA should explain how its proposed transport rule addresses transport more effectively than New York's plan.

Response 1: As noted above, we identified a number of deficiencies with New York's SIP submission to support the proposed disapproval of the plan as to prongs 1 and 2 with respect to the 2008 ozone NAAQS. While EPA cited the modeling conducted for EPA's proposed Cross State Air Pollution Rule Update for the 2008 ozone standard (CSAPR Update), 80 FR 75706 (December 3, 2015), as additional evidence that emissions from New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in other states, this action did not propose and does not finalize any remedy to address the deficiency identified in New York's SIP submission. This action does not itself replace New York's plan with the proposed remedy that was included in the CSAPR Update proposal or any other remedy. Rather, with respect to prongs 1 and 2, this action disapproves New York's submission for its failure to provide sufficient analysis to support its conclusion that the state's SIP contains adequate provisions prohibiting emissions which interfere with air quality in other states.

NYSDEC misstates the burden imposed upon the EPA in reviewing this action. In submitting an infrastructure SIP, the state's burden is to demonstrate to EPA's satisfaction that it has complied with the statutory requirements of CAA section 110(a)(2). EPA's role in reviewing infrastructure SIP submissions is to ensure that the state's plan complies with the statute. With respect to prongs 1 and 2, the EPA has reviewed New York's demonstration and determined, for the reasons summarized above, that it does not adequately demonstrate that the state's plan is sufficient to ensure that emissions from the state will not significantly contribute to nonattainment or interfere with maintenance. As noted below, this disapproval will trigger a federal implementation plan (FIP) clock which will require the EPA to promulgate a plan to prohibit those levels of emissions that impact downwind air quality in violation of the statute. However, the EPA is not required to provide that metric at the time it reviews the state's demonstration.

Moreover, EPA's 2011 modeling baseline used for evaluating interstate transport with respect to the 2008 ozone NAAQS accounted for the emission reductions from controls listed in the SIP—including New York's Reasonably Available Control Technology (RACT) rules—and nonetheless continued to show that New York would contribute to downwind air quality problems. Despite the considerable emission reductions achieved by New York, EPA's technical analysis for the CSAPR Update proposal demonstrates that New York's emissions still have an impact on other states.

Comment 2: The NYSDEC agreed that emissions in New York contribute significantly to nonattainment or interfere with maintenance in downwind areas. However, NYSDEC states that EPA should review New York's control program relative to what EPA might determine to be an approvable remedy rather than basing its disapproval on NYSDEC's emission reduction estimates and the fact that New York did not quantify its significant contribution.

Response 2: In this action, EPA is rightly focused on the discrete question of whether New York has demonstrated that its SIP contains adequate provisions to prohibit significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in downwind states. New York acknowledges in its comment, and EPA agrees, that New York's SIP submission does not currently satisfy those requirements. As such, EPA must disapprove New York's SIP submission for failing to satisfy the statutory requirements of CAA section 110(a)(2)(D)(i)(I). As explained in our June 21, 2016 proposal, and summarized above, New York has not demonstrated that its SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard. Furthermore, despite recent emission reductions achieved by New York, in EPA's technical analysis for the proposed CSAPR Update, our modeling shows that New York contributes well above the air quality threshold of 1 percent of the 2008 ozone NAAQS (0.75 parts per billion) to several projected downwind nonattainment or maintenance receptors. As indicated in our proposal, EPA's modeling shows that New York contributes 16.96 ppb to downwind receptors in Connecticut, and 17.21 ppb to downwind maintenance receptors in Connecticut and New Jersey, both of which greatly exceed the threshold contribution levels.

Comment 3: The NYSDEC stated that EPA did not provide states with a clear indication of what was required for their respective transport SIPs at the time they were due. Without this information about cross-state contributions, NYSDEC relied on control measures already in place within the state.

Response 3: States have an independent responsibility to demonstrate that their plans contain adequate provisions to address the statutory interstate transport provisions, specifically to demonstrate that the plan properly prohibits emissions that will significantly contribute to nonattainment or interfere with maintenance of the NAAQS in downwind states. As the Supreme Court clearly held in *EPA* v. *EME Homer City Generation, L.P.*, "nothing in the statute places the EPA under an obligation to provide specific metrics to States before they undertake to fulfill their good neighbor obligations." 134 S. Ct. 1584, 1601 (2014).[1] Simply put, the CAA does not require EPA to quantify states' good neighbor obligations before acting on their SIP submissions. Nevertheless, EPA did provide information to assist states with developing or supplementing their SIP submittal for the 2008 ozone NAAQS. On January 22, 2015, we issued a memorandum providing preliminary modeling information regarding potential downwind air quality problems and levels of upwind state contributions. *See* Memorandum from Stephen D. Page to Regional Air Division Directors, Regions 1–10, "Information on the Interstate Transport 'Good Neighbor' Provision for the 2008 Ozone [NAAQS] under [CAA] Section 110(a)(2)(D)(i)(I)", January 22, 2015."[2] As we noted in our CSAPR Update proposal, the EPA also provided updated modeling and contribution information in its August 4, 2015 NODA. (80 FR 46271). All of these documents consistently indicated that the EPA's technical analysis showed that New York emissions contribute to downwind air quality problems with respect to the 2008 ozone NAAQS, yet New York did not revise or supplement its SIP submittal with additional data demonstrating that the state had satisfied its statutory obligation.

Comment 4: NYSDEC states that EPA's failure to implement a full remedy leaves states unsure how to satisfy their transport obligations in regard to the 2008 ozone NAAQS. NYSDEC asserts that EPA should propose a subsequent update to CSAPR by June 2017 that encompasses a full remedy. NYSDEC states that the update should include requirements for large non-EGU sources and utilize a control cost threshold that is more equitable to states.

Response 4: For the reasons stated above, this comment is outside of the scope of this action. EPA will address comments regarding the adequacy of the proposed FIP in the final CSAPR Update rule.

Comment 5: Connecticut DEEP is supportive of the proposed disapproval of New York's SIP submission regarding prongs 1 and 2. DEEP notes that New York and Connecticut have partnered for over 40 years to provide clean air, especially in the southwest portion of Connecticut and the New York City metropolitan region, and will continue this collaboration. DEEP encourages EPA to describe, with as much specificity as possible, the steps states should take to meet their good neighbor responsibilities under the Clean Air Act. DEEP also urges EPA to immediately propose and finalize a full transport remedy for the 2008 ozone NAAQS rather than allowing compliance efforts for the 2015 NAAQS to drive compliance with the 2008 NAAQS.

Response 5: EPA is supportive of the states' collaborative efforts to improve air quality. This action is focused on EPA's review of New York's infrastructure SIP submission addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i) submitted for the 2008 ozone NAAQS. As noted earlier, while the EPA is not obligated to quantify state's emission reduction obligations prior to or as part of reviewing a state's SIP submission, we have provided data informative to the state's development and EPA's review of SIPs addressing these requirements with respect to the 2008 ozone NAAQS. EPA will further address state's emission reduction obligations in the rulemaking to finalize the CSAPR Update rule.

Comment 6: The Alliance requested extension of the public comment period for the proposal to coincide with the comment period for a proposed consent decree "requiring the EPA to reject the SIP" to address a lawsuit filed by the Sierra Club in the United States District Court for the Northern District of California.[3]

Response 6: We disagree that an extension of the public comment period is warranted for this action. The commenter does not provide an adequate justification why an extension is necessary. The proposed consent decree only concerns a proposed deadline by which EPA would have to act on the state's SIP submissions under CAA section 110(k)—not the substance of that action. *See* 81 FR 42351 (June 29, 2016). In contrast, the June 21, 2016 proposed disapproval sought comment on a substantive action—*i.e.,* whether to approve or disapprove New York's submission, and on what basis.

Comment 7: The Alliance asserts that the proposed disapproval of New York's transport SIP, the proposed consent decree mentioned in *comment 6,* and the CSAPR Update rule are all related and should be resolved at the same time. The Alliance states that they are concerned that one of the actions may be settled without consideration of comments associated with the other actions, and that the resulting plans for attainment may not be as cost effective, "reduction efficient" or may not significantly impact attainment. By way of example, the Alliance notes that it provided comments on the proposed CSAPR Update rule regarding errors in EPA's supporting modeling. The Alliance contends that without finalizing the CSAPR Update rule, neither the EPA nor the commenting public is able to fully evaluate the legitimacy of the SIP disapproval. The Alliance further states that in as much as the proposed consent decree is intended to effectuate SIP disapproval, finalization of the consent decree is unwarranted until the full assessment of public input to the CSAPR Update rule is completed and finalized.

Response 7: EPA disagrees that the proposed disapproval of New York's transport SIP, the proposed consent decree mentioned in *comment 6,* or the CSAPR Update rule should be resolved at the same time. CAA section 110(k)(2) requires EPA to act on a state's SIP submission within one year after the submission is determined to be complete. As indicated in the response to *comment 6,* the proposed consent decree with the Sierra Club governs only the timetable on which EPA would be required to act on the state's SIP submissions under CAA section 110(k)(2)—not the substance of EPA's action.

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[1] "Nothing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP. Rather, the statute speaks without reservation: Once a NAAQS has been issued, a State 'shall' propose a SIP within three years, § 7410(a)(1), and that SIP 'shall' include, among other components, provisions adequate to satisfy the Good Neighbor Provision, § 7410(a)(2)." *EPA* v. *EME Homer City Generation, L.P.*, 134 S. Ct. at 1601.

[2] Available at *https://www.epa.gov/sites/production/files/2015-11/documents/goodneighborprovision2008naaqs.pdf.*

[3] *See Sierra Club* v. *Gina McCarthy,* No. 3:15–cv–04328–JD (N.D. Cal.).

As described in the proposal and earlier in this document, EPA has identified several ways in which New York's SIP submission was deficient for purposes of addressing the state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I). In particular, EPA proposed to disapprove New York's SIP submission because the State's modeling showed "predicted" nonattainment in other nearby states with existing measures; the submission did not demonstrate that the emission rates at which EGUs operated were the result of enforceable emission limits; the submission failed to address the State's potential interference with maintenance (or prong 2 of section 110(a)(2)(D)(i)); and the submission relied on the state's implementation of CAIR, a rule that is no longer being implemented by the states and EPA and that was declared invalid by the D.C. Circuit.

While EPA cited the modeling conducted for the proposed CSAPR Update rule as additional evidence that New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligations. Rather, the evaluation of whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind, and if so what reductions are necessary to address that contribution, is being conducted in the context of the CSAPR Update rulemaking. Accordingly, EPA is considering submitted comments regarding EPA's air quality modeling and various associated legal and policy decisions in finalizing that rulemaking.

EPA notes that the technical data discussed at proposal with respect to New York's potential contribution to downwind air quality problems is consistent with modeling previously conducted for trading programs addressing interstate ozone transport such as CSAPR (76 FR 48208), CAIR (70 FR 25162), and the NO_X SIP Call (63 FR 57356), indicating that New York is frequently linked to downwind receptors. The modeling conducted to support the proposed CSAPR Update is the most recent technical information available to the Agency which still shows such linkages to downwind receptors. Even absent this modeling data, New York's SIP submission is inadequate to demonstrate compliance with prongs 1 and 2 of CAA section 110(a)(2)(D)(i) with respect to the 2008 ozone NAAQS.

Comment 8: The Alliance commented that, under 110(a)(2)(D)(i)(I), SIP control requirements should apply to a source category or a reasonable aggregation of emissions. The Alliance further stated that under the CSAPR Update rule, EPA unreasonably concluded that the New York electric generating unit sector budget—and only that budget—had to be revised to address significant nonattainment. The Alliance contends that the New York EGU sector emissions are not a significant contributor to neighboring state nonattainment or maintenance issues, and if EPA finalizes the SIP disapproval and finalizes the CSAPR Update rule as proposed, another round of emission reductions from the New York EGU sector will not provide any significant improvement in air quality. The Alliance concludes that it is not appropriate to consider additional reductions from EGUs until reductions are found in other sectors.

Response 8: As described in the proposal and earlier in this document, EPA has identified several ways in which New York's SIP fails to address the prongs 1 and 2 requirements of CAA section 110(a)(2)(D)(i)(I). This action did not propose and does not finalize any remedy to address the deficiency identified in New York's SIP submission. Rather, with respect to prongs 1 and 2, this action disapproves New York's submission for its failure to provide sufficient analysis to support its conclusion that the state's SIP contains adequate provisions to meet interstate transport requirements with respect to the 2008 ozone NAAQS. The evaluation of the emission reductions necessary to address the State's significant contribution, including from which sectors such reductions might be achieved, is outside the scope of this rulemaking, and is being conducted in the context of the CSAPR Update rulemaking.

Comment 9: The Alliance cited comments submitted to the docket of the CSAPR Update rulemaking that identified alleged technical deficiencies in EPA's modeling. The Alliance states that EPA should run its modeling using the Integrated Planning Model (IPM) 5.15 base case, and correct for other technical errors in CSAPR modeling. The Alliance questioned the CSAPR Update rule's conclusion of state linkages to downwind nonattainment (and therefore the validity of EPA's proposed disapproval), and the expenditure of significant state and EGU resources on developing revised SIPs and modifying controls based on an outdated modeling platform. The Alliance also states that regulated entities are not being given appropriate notice and opportunity to comment on the SIP disapproval when EPA has not yet completed modeling for the final CSAPR Update rule. The Alliance concludes that the correction of errors will demonstrate that the CSAPR Update rule, which EPA is relying on to disapprove New York's SIP, results in over-control.

Response 9: As noted earlier in this document, EPA will consider timely submitted comments regarding EPA's air quality modeling, the modeling platform, and state linkages to downwind nonattainment for the CSAPR Update in the context of that rulemaking, not this one.

With respect to this rulemaking, EPA disagrees with the commenter that we are only relying on CSAPR modeling to disapprove the State's SIP. As we have previously noted, EPA has identified several ways in which New York's SIP submission is deficient for purposes of addressing the State's obligations under CAA section 110(a)(2)(D)(i)(I). While EPA cited the modeling conducted for the CSAPR Update as additional evidence that New York may significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS in downwind states, we did not propose to make a specific finding of contribution or to quantify any specific emissions reduction obligations. Rather, EPA is conducting its evaluation of whether emissions from the State significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone NAAQS downwind and, if so, what reductions are necessary to address that contribution, in the context of the CSAPR Update rulemaking.

EPA therefore disagrees with the commenter that appropriate notice and comment to regulated entities on the proposed SIP disapproval has not been provided since the CSAPR Update modeling has not been finalized. EPA provided a 30 day comment period on the proposed disapproval (see 81 FR 40229). EPA has also provided appropriate public notice and comment for the CSAPR Update rule (see 80 FR 75706). Moreover, there are no regulated entities under this action as this action merely disapproves the portion of New York's SIP addressing CAA section

110(a)(2)(D)(i)(I), and does not itself create any new requirements.

Comment 10: The Alliance commented that EPA should have performed refined screening modeling to determine all the factors driving ozone exceedances in New York and Connecticut. The Alliance further states that failure to do so could unnecessarily require further reductions in New York, not resolve the ozone nonattainment problem, and unnecessarily lead to the disapproval of New York's SIP.

Response 10: As discussed above, this action did not propose and does not finalize any remedy to address the deficiency identified in New York's SIP submission. Rather, with respect to prongs 1 and 2, this action disapproves New York's submission for its failure to provide sufficient analysis to support its conclusion that the state's SIP contains adequate provisions to meet interstate transport requirements with respect to the 2008 ozone NAAQS. The degree to which additional emission reductions may be necessary to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS will be evaluated in a separate rulemaking.

Comment 11: The Alliance submitted analyses regarding NO_X emission trends in New York showing declining NO_X emissions and emission rates, and operational data from 2007 to 2015 for annual NO_X emissions, NO_X ozone season emissions, NO_X peak day emissions, and NO_X emissions on ozone exceedance days. The Alliance commented that New York's "higher level of assumed reductions" is more conservative than the actual data reveal and that New York's modeling assumptions should be honored by EPA. The Alliance indicates that EPA's SIP disapproval is based on New York's modeling using higher levels of assumed emission reductions, assuming 48% NO_X reductions and 30% VOC reductions without demonstrating how it will achieve those higher levels of emission reductions. The Alliance further indicated that the data they submitted shows that between 2007 and 2015, two years before the New York modeling year, annual NO_X emissions decreased 64%, ozone season NO_X emissions decreased 56%, peak ozone season emission day NO_X emissions decreased 40%, and the average NO_X emission reduction on those days when ozone exceedances were observed at eight New York ozone monitoring sites ranged from 47% to 63% and the NO_X emission reduction at the Fairfield, Connecticut ozone monitoring site was 38%. The Alliance further stated that both the EPA and NYSDEC modeling used annual or ozone season emissions for their projections and in both instances the observed reductions from 2007 to 2015 are greater than the reductions used by NYSDEC. The Alliance concludes that the EPA basis for the SIP disapproval is incorrect.

The Alliance also notes that EPA claimed that New York did not demonstrate that the emission rates at which EGUs operated in the state are the result of enforceable emission limits or other mandatory programs such that the emission rate will not increase. The Alliance notes that the NO_X emission trends show a marked decrease in 2014 when New York's revised RACT limits become effective, resulting in an annual NO_X rate decrease of 52% and an ozone season rate decrease of 42%. The Alliance states that the comparison of daily NO_X emissions from 2007 to 2015 shows that New York's revised NO_X RACT limits did have an enforceable impact. The Alliance also notes that coupled with the number of recent retirements at other New York facilities, it is extremely unlikely that NO_X emission rates could increase substantially.

Response 11: EPA agrees with the commenter that NO_X emissions and emission rates in New York have been trending downward since 2007. EPA also agrees that due to New York's stringent 2014 RACT emission limits—which EPA approved into the SIP and, as such, are federally enforceable—there are enforceable limits on NO_X emissions from EGUs and other large boilers regulated under New York's RACT rules. New York's RACT rules also make it unlikely that emission rates from those sources will increase above the levels permitted by the emissions limits.

As an initial matter, EPA notes that the Alliance based its analysis only on a subset of New York's emissions data (from EPA's Clean Air Markets database), whereas New York's modeling was based on a much larger emission inventory (projected 328,457 tons of NO_X emissions, and 368,784 tons of VOC emissions from overall state emissions in 2020).

Most importantly, EPA notes that New York's RACT rules were factored into New York's modeling as well as EPA's base case modeling. Despite emission reductions from New York's RACT regulations, as noted previously in this document, EPA modeling still shows a very large contribution to downwind nonattainment and maintenance receptors from New York (*i.e.,* over twenty times the threshold contribution). New York's modeling also showed nonattainment problems in nearby states. Thus, New York has not demonstrated that its RACT rules are sufficient to address the state's significant contribution to nonattainment and interference with maintenance of the 2008 ozone NAAQS in other states.

Comment 12: The Alliance submitted analyses showing the correlation between New York NO_X emissions and observed daily maximum ozone concentrations on ozone exceedance days. The Alliance commented, "While these analyses confirm that there is a relationship [between ozone concentrations in Fairfield, Connecticut and New York EGU NO_X emissions] they also indicate that EPA and NYSDEC should address the trend toward a weaker relationship noted in the difference between 2007 and 2015." The Alliance further stated, "[I]t is obvious that the relationship between [New York] emissions and downwind ozone is complicated, not solely related to [New York] EGU emissions and must be evaluated in better detail before the EPA unilaterally rejects the New York's [sic] SIP."

Response 12: EPA agrees that there is a relationship between New York EGU NO_X emissions and ozone concentrations in Fairfield, Connecticut. This relationship supports EPA's finding that reductions in New York EGU NO_X emissions are needed to help lower ozone concentrations in Fairfield, Connecticut and at other downwind nonattainment and maintenance sites in Connecticut to which New York is linked. Ozone concentrations in Fairfield, Connecticut are dependent upon a number of factors including NO_X emissions from EGUs and other upwind sources of NO_X and VOC emissions, as well as local emissions in Connecticut. Inter-annual variability in meteorology is a principal factor in determining year-to-year differences in the magnitude of ozone concentrations. In this respect, the fact that the relationship between New York EGU NO_X emissions and ozone in Fairfield, Connecticut is different in 2007 compared to 2015 does not disprove the contributions of New York EGU NO_X emissions to high ozone concentrations in Fairfield, Connecticut.

IV. What action is EPA taking?

EPA is disapproving a portion of the April 4, 2013 SIP submittal from New York pertaining to the requirements of CAA section 110(a)(2)(D)(i)(I) regarding interstate transport of air pollution that will significantly contribute to nonattainment or interference with maintenance of the 2008 ozone NAAQS in other states, known as prongs 1 and 2 of the good neighbor provision.

EPA is approving the portion of the April 4, 2013 SIP submittal from New York pertaining to the requirements of CAA section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4).

We expect to take action on the other portions of New York's infrastructure SIP at a later date.

V. What are the consequences of a disapproved SIP?

Pursuant to CAA section 110(c)(1), this disapproval establishes a 2-year deadline for the EPA to promulgate a FIP for New York addressing the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS unless New York submits and we approve a SIP that meets these requirements. Disapproval does not start a mandatory sanctions clock for New York pursuant to CAA section 179 because this action does not pertain to a part D plan for nonattainment areas required under CAA section 110(a)(2)(I) or a SIP call pursuant to CAA section 110(k)(5).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This final action is not a "significant regulatory action" under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget for review.

B. Paperwork Reduction Act (PRA)

This final action does not impose an information collection burden under the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This rule does not impose any requirements or create impacts on small entities. This partial SIP approval and partial SIP disapproval under CAA section 110 will not in-and-of itself create any new requirements but simply approves and disapproves certain state requirements for inclusion into the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it merely partially approves and partially disapproves a SIP submittal from the State of New York.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the level of protection provided to human health or the environment. This action merely partially approves and partially disapproves a SIP submittal from the State of New York.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 12, 2016.

Judith A. Enck,

Regional Administrator, Region 2.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. Section 52.1670(e), is amended by adding an entry for "Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS" at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA Approval date	Explanation
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 ozone NAAQS.	Statewide	04/04/13	08/26/16, [Insert Federal Register citation].	This action addresses the following CAA element: 110(a)(2)(D(i)(II) prong 4.

■ 3. Section 52.1683 is amended by adding paragraph (o) to read as follows:

§ 52.1683 Control strategy: Ozone.

* * * * *

(o) The portion of the SIP submitted on April 4, 2013 addressing Clean Air Act section 110(a)(2)(D)(i)(I) for the 2008 ozone NAAQS is disapproved.

[FR Doc. 2016–20411 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0233; FRL–9951–41–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Control of Emissions of Volatile Organic Compounds From the Reynolds Consumer Products LLC—Bellwood Printing Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a revision to the Commonwealth of Virginia (Virginia) state implementation plan (SIP). The revision would remove a consent agreement and order (consent order) previously included in the Virginia SIP to address reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) control at the Reynolds Consumer Product LLC (Reynolds) plant and include a state operating permit in the SIP to continue to address RACT requirements for the Reynolds plant. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 25, 2016 without further notice, unless EPA receives adverse written comment by September 26, 2016. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0233 at *http://www.regulations.gov,* or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2015, the Commonwealth of Virginia through the Virginia Department of Environmental Quality (VADEQ) submitted a revision to its SIP. The SIP revision submittal seeks to include state operating permit conditions and terms for the control of emissions of VOCs from Reynolds' plant located in Chesterfield, Virginia, in the Richmond Area, in order to address VOC RACT requirements for Reynolds. Previously, VOC RACT requirements for Reynolds were addressed via inclusion in the Virginia SIP of a Consent Order between VADEQ and Reynolds. This SIP revision submittal seeks to remove the prior Reynolds' consent order included in the SIP and replace it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. The SIP revision submittal also contains minor administrative and technical changes related to VOCs compared to the Reynolds' consent order; however, the substantive provision of VOC RACT remains the same for the Reynolds' plant, thus the minor administrative and technical changes have no effect on facility operation, VOC emissions, or air quality.

The Virginia SIP provides that the Commonwealth of Virginia's State Air Pollution Control Board must, on case-by-case basis, determine RACT for VOCs from major sources for which EPA has not issued a control technology guideline (CTG). EPA defines RACT as "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." 44 FR 53761 (September 17, 1979). The Richmond Area was originally designated as a "moderate" ozone nonattainment area under the 1-hour ozone national ambient air quality standard (NAAQS), and thereby had to meet the non-CTGs RACT requirements under section 182 of the CAA (56 FR 56694, November 6, 1991). Reynolds' printing plant was identified as being subject to non-CTG RACT. The facility underwent a RACT analysis, and a federally-enforceable consent order was issued to the facility on October 30, 1986. The order was then submitted to EPA as a SIP revision, and approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963).

II. Summary of SIP Revision

The SIP revision removes the prior Reynolds' consent order included in the

SIP and replaces it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. Including the permit in the SIP will continue to implement RACT requirements for the plant, a major source of VOCs, as required by sections 172 and 182(b) of the CAA. The permit established control technology and other requirements for the control of VOC emissions from the Reynolds' plant in the Richmond Area. The permit incorporates only the conditions of the consent order, along with general permit conditions relating to testing, right of entry, and change of ownership. All operational requirements are limited in scope to those required by the consent order approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963). This includes process requirements to control VOC emissions, process emission limits, and on-site records.

The Commonwealth of Virginia's SIP revision also corrects two typographical errors in the formula used to calculate the estimated percent reduction in VOC emissions at Reynolds' plant for X14 (total actual solvent usage for time period) and X15 (total estimated solvents the plant is capable of using if water based materials were not used). The formula with the typographical errors was approved into the Commonwealth's SIP on June 6, 1996 (61 FR 29963). The revised formula for the state operating permit merely corrects a typographical mistake made within the consent order but does not alter how VOCs are or were calculated nor affect VOC emissions from the plant. A more detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action.

III. Final Action

EPA is approving the October 26, 2015 submittal for the purpose of removing a consent order previously included in the Virginia SIP to address RACT requirements for VOC control at the Reynolds' plant and including Reynolds' state operating permit in the SIP to continue to address RACT requirements for Reynolds. EPA also approves the minor administrative and technical changes in the formula used to calculate the estimated percent reduction in VOC emissions. EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of this **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on *October 25, 2016* without further notice unless EPA receives adverse comment by *September 26, 2016*. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . ." The opinion concludes that "[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval." Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of a revision removing the prior Reynolds' consent order included in the SIP and replacing it with nearly identical VOC RACT requirements now contained for the Reynolds' plant in a state operating permit. Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update of the SIP compilation.[1] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 25, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This action removing a consent order previously included in the Virginia SIP to address RACT requirements for VOCs control at Reynolds plant and including Reynolds' state operating permit in the SIP to continue to address RACT requirements for Reynolds; as well as, making minor administrative and technical changes in the formula used to calculate the estimated percent reduction in VOC emissions, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (d) is amended by revising the entry for Reynolds Metals Co.-Bellwood to read as follows:

§ 52.2420 Identification of plan.

* * * * *

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[1] 62 FR 27968 (May 22, 1997).

(d) * * *

EPA-APPROVED SOURCE SPECIFIC REQUIREMENTS

Source name	Permit/order or registration No.	State effective date	EPA approval date	40 CFR part 52 citation
* * *	*	*	*	*
Reynolds Metals Co.-Bellwood	50260	10/20/2015	8/26/2016 [Insert ***Federal Register*** citation].	52.2465(c)(110)
* * *	*	*	*	*

* * * * *

[FR Doc. 2016–20299 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–230; FCC 16–105]

Television Broadcasting Services; Seaford, Delaware

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review.

SUMMARY: In this Memorandum Opinion and Order, the Commission denies the application for review of the Media Bureau's dismissal of a petition for reconsideration of decisions that allotted VHF television channel 5 to Seaford, Delaware. The Media Bureau had dismissed the petition for reconsideration challenging the Seaford allotment because it was untimely filed and the Commission concludes that there is no basis to waive the statutory deadline for the filing of petitions for reconsideration.

DATES: August 26, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Media Bureau, (202) 418–1507, or by email at *Jeremy.Miller@fcc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to sections 331(a) and 307(b) of the Communications Act, this is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 09–230, adopted August 3, 2016, and released August 4, 2016. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis of Memorandum Opinion and Order

The Commission has before it for consideration an Application for Review filed by PMCM TV, LLC ("PMCM"), seeking review of three decisions by the Video Division of the Media Bureau (the "Division"): (1) The *Seaford Report and Order* that allotted very high frequency ("VHF") television channel 5 to Seaford, Delaware; (2) the *Seaford MO&O on Reconsideration* rejecting a petition for reconsideration of the *Seaford Report and Order* and (3) the *Seaford MO&O on Further Reconsideration* dismissing PMCM's petition for reconsideration of the prior *Seaford* decisions as untimely. For the reasons set forth below, we deny the AFR and affirm the Division's dismissal of the PMCM Petition.[1]

In ordering the Seaford allotment, the Commission concluded that the outcome of PMCM's Reallocation Request was not relevant. PMCM did not seek reconsideration of that finding until nearly three years later when, for the first time, it opposed the new Seaford allotment that it had previously "strongly" supported. In hindsight, PMCM now argues that the Commission should have postponed allocating a new channel to Delaware while its efforts to reallocate channel 2 played out at the Commission and in court, even though the pendency of that litigation did not prevent PMCM from raising other concerns premised on a favorable outcome regarding its Reallocation Request, and the Seaford allotment is consistent with that request.[2] In short, it appears that PMCM simply changed its strategy as developments unfolded.

The staff was correct in determining that PMCM's Petition for Reconsideration of the *Seaford Report and Order* was untimely. Section 405 of the Act provides that "petitions for reconsideration must be filed within thirty days from the date upon which public notice is given of the action . . . complained of." Public notice of the *Seaford Report and Order* was given on May 7, 2010. The Petition for Reconsideration was filed on March 15, 2013, on the basis that allotment of a new channel to Seaford was improper. PMCM's claim that its Petition was timely because it was filed within 30 days after issuance of the *Seaford MO&O on Further Reconsideration* is entirely without merit. PMCM's Petition challenged the allocation adopted in the *Seaford Report and Order,* not the Commission's rejection of BMC's argument that the Commission should have placed the new allocation at channel 2 or 3. As to its request for reconsideration of the *Seaford MO&O on Reconsideration,* the Petition therefore was an impermissible collateral challenge to the *Seaford Report and Order.* The deadline for filing the Petition therefore was 30 days after public notice of the *Seaford Report and Order,* not 30 days after public notice of the *Seaford MO&O on Reconsideration.* Accordingly, PMCM filed its Petition for Reconsideration approximately three years late.

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[1] An Application for Review must establish that the actions of the delegated authority: (i) Conflicted with statute, regulation, case precedent or Commission policy; (ii) involved a question of law or policy not previously resolved by the Commission; (iii) involved precedent or policy that should be overturned or revised; (iv) made an erroneous finding as to an important fact; or (v) made a prejudicial procedural error.

[2] PMCM now attempts to excuse its failure to object to the Seaford allotment earlier on the grounds that it had no reason to object to the proposal to place the allotment in Seaford, in Southern Delaware, which lacked robust broadcast service, but its interests changed when Western Pacific applied to change the community of license to Dover. PMCM even sought to bid in the auction for channel 5. As to its objection to an allotment in Dover, WMDE's application for a change in community of license is the proper proceeding for the airing of this grievance, and in fact, PMCM has sought reconsideration of the Bureau's decision in that proceeding.

The Commission can only accept late-filed petitions for reconsideration if the petitioner shows that extraordinary circumstances warrant overriding the statutory filing deadline. As the D.C. Circuit has explained, "[a]lthough section 405 does not absolutely prohibit FCC consideration of untimely petitions for reconsideration, we have discouraged the Commission from accepting such petitions in the absence of extremely unusual circumstances." Consistent with the D.C. Circuit's decisions, the Commission in applying that standard has focused on whether the Commission has failed to adhere to its procedural rules for providing notice of its decisions. PMCM has not even attempted to show that it has met this standard, much less demonstrated that the extraordinary circumstances required under this precedent are present here.

The assertion that the Court's decision in *PMCM TV* constituted "changed circumstances" warranting an extension of the deadline for reconsideration of the *Seaford Report and Order* is also without merit. This contention presumes incorrectly that a showing of "changed circumstances" under section 1.429(b) warrants an extension of the statutory deadline for the filing of petitions for reconsideration. Thus, PMCM claims that "[i]t is hornbook law that 'changed circumstances' provide an adequate legal basis for reconsideration" and that the "relevant test is whether the petitioner has raised the changed circumstance at the first opportunity to do so." Rather than supporting its theory that changed circumstances can support a request for reconsideration filed after the applicable statutory deadline, the single case PMCM cites, a 1979 Commission order, relates not to the filing of petitions for reconsideration after the statutory deadline but instead to the circumstances under which parties may seek reconsideration of a Commission order denying an application for review. Section 1.429(b)(1) sets forth the limited circumstances in which new matter raised in a timely petition for reconsideration will be considered. It does not and cannot supersede the statutorily established deadline for the filing of petitions for reconsideration, which is set forth in Section 405 of the Act and reflected in Section 1.429(d) of the Commission's rules.[3]

For the foregoing reasons, PMCM's argument that the Petition was timely filed because of its submission within 30 days of the release of the *Seaford MO&O on Further Reconsideration* is without merit. We therefore affirm the Bureau's dismissal of the Petition and deny the AFR. In light of our denial of the AFR, the Motion to Dismiss and associated pleadings are moot. We therefore dismiss these filings.

Accordingly, it is ordered That, pursuant to section 5(c)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c)(5), and § 1.115(g) of the Commission's rules, 47 CFR 1.115(g), the Application for Review IS DENIED.

It is further ordered That, pursuant to section 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), and § 1.41 of the Commission's rules, 47 CFR 1.41, the Motion to Dismiss, Request for Leave to File Motion to Dismiss, and Reply to Opposition to Motion to Dismiss of Western Pacific Broadcast, LLC, and the Opposition to Motion to Dismiss, Comments in Response to Reply to Opposition to Motion to Dismiss, and Request for Leave to File Comments in Response to Reply to Opposition to Motion to Dismiss of PMCM TV, LLC, ARE DISMISSED as moot.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–20504 Filed 8–25–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

48 Parts 301, 303 and 333

Notice of Adoption of the Health and Human Services Acquisition Regulations (HHSAR) and OIG Class Deviations

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: HHS OIG adoption of the HHSAR, and deviation from three clauses.

SUMMARY: This announcement establishes that the OIG contracting activity will follow the requirements of the HHSAR, subject to three deviations establishing that OIG personnel shall seek legal guidance from the Office of Counsel to the Inspector General instead of the Office of the General Counsel.

DATES: These deviations are effective on August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Hildebrandt, Office of Counsel to the Inspector General, Office of Inspector General, (202)205–9493.

SUPPLEMENTARY INFORMATION:

I. Background

Notice is hereby given that the Office of Inspector General (OIG) adopts the Health and Human Services Acquisition Regulations (HHSAR) as issued in the Code of Federal Regulations (CFR) as chapter 3 of title 48; as promulgated by the Assistant Secretary for Financial Resources (ASFR) under the authority of 5 U.S.C. 301 and section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 121(c)(2)), and as delegated by the Secretary.

In addition, by the authority vested in the Senior Procurement Executive (SPE) in accordance with 48 CFR chapter 3, section 301.401 of the HHSAR, and 48 CFR chapter 1, section 1.401 of the Federal Acquisition Regulations (FAR), I execute three class deviations from the HHSAR to ensure compliance with section 3(g) of the Inspector General Act. These deviations establish the OIG shall make use of the Office of Counsel to the Inspector General (OCIG), and not Office of the General Counsel (OGC), for the purposes of HHSAR sections 301.602–3; 303.203; & 333.102(g)(1); and further reaffirm the requirement that OCIG be consulted when the HHSAR and/or FAR require consultation with legal counsel.

Dated: August 2, 2016.

Joanne M. Chiedi,

Principal Deputy Inspector General, Senior Procurement Executive for OIG.

[FR Doc. 2016–18790 Filed 8–25–16; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150306232–6736–02]

RIN 0648–BE96

Fisheries of the Northeastern United States; Monkfish; Framework Adjustment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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[3] There is no exception in section 1.429(d) for late-filed petitions based on new information nor any other exception.

ACTION: Final rule.

SUMMARY: We are partially approving Framework Adjustment 9 to the Monkfish Fishery Management Plan. This action is necessary to better achieve the goals and objectives of the management plan and achieve optimum yield. It is intended to increase monkfish landings by enhancing the operational and economic efficiency of existing management measures.

DATES: This rule is effective August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281–9122.

SUPPLEMENTARY INFORMATION:

Background

The monkfish fishery is jointly managed by the New England and the Mid-Atlantic Fishery Management Councils under the Monkfish Fishery Management Plan (FMP). The fishery extends from Maine to North Carolina from the coast out to the end of the continental shelf. The Councils manage the fishery as two management units, with the Northern Fishery Management Area (NFMA) covering the Gulf of Maine and northern part of Georges Bank (GB), and the Southern Fishery Management Area (SFMA) extending from the southern flank of GB through Southern New England (SNE) and into the Mid-Atlantic (MA) Bight to North Carolina.

The monkfish fishery has not fully harvested the available annual catch target since fishing year 2011, particularly in the NFMA where the under-harvest has been more substantial. As a result, the fishery has not been achieving optimum yield in either area. The Councils developed Framework 9 to enhance the operational efficiency of existing management measures in an effort to better achieve optimum yield. Because this action modifies some requirements for Northeast (NE) multispecies sector vessels, it is also considered Framework Adjustment 54 to the NE Multispecies FMP.

On June 23, 2016, we published a rule (81 FR 40838) proposing the measures included in Framework 9, and solicited comment through July 8, 2016. The Councils took final action on Framework 9 during summer 2015 and formally submitted it to us in February 2016. The proposed rule included three measures. This rule approves two measures and disapproves one measure. For more information on these measures, and the rationale for approval or disapproval, please refer to Approved Measures and Disapproved Measures below.

TABLE 1—STATUS OF MEASURES IN THIS RULE

Status	Measure	Area affected
Approved	Monkfish Possession Limits	NFMA.
Approved	Minimum Mesh Requirements and Possession Restrictions	SFMA.
Disapproved	Northeast Multispecies Days-at-sea Declaration Flexibility	NMFA.

Approved Measures

1. Monkfish Possession Limits in the NFMA

This rule eliminates the monkfish possession limit for monkfish Category C and D permitted vessels (referred to as Category C and D vessels in this section) fishing under both a NE multispecies and monkfish day-at-sea (DAS) in the NFMA. This measure is designed to help increase monkfish landings and better achieve the annual catch target caught in the NFMA.

Possession limits differ based on the type of DAS being used by a vessel. By eliminating the trip limit for a vessel fishing under both a NE multispecies and monkfish DAS, we are adding another tier to the possession limit system without changing the existing possession limits for a vessel fishing on a NE multispecies DAS or a monkfish DAS. A Category C or D vessel that is fishing under both a NE multispecies and a monkfish DAS in the NFMA may now retain an unlimited amount of monkfish. Table 2 includes a summary of the existing and new monkfish tail weight possession limits for a vessel fishing under the various DAS available in the NFMA.

TABLE 2—EXISTING AND NEW MONKFISH TAIL WEIGHT POSSESSION LIMITS FOR MONKFISH CATEGORY C AND D PERMITTED VESSELS FISHING ON A DAS IN THE NFMA

	DAS Type	Category C	Category D
Existing Measures	NE Multispecies A only	600 lb (272.16 kg)	500 lb (226.80 kg).
	Monkfish only	1,250 lb (566.99 kg)	600 lb (272.16 kg).
New Measure	NE Multispecies A and Monkfish	Unlimited	Unlimited.

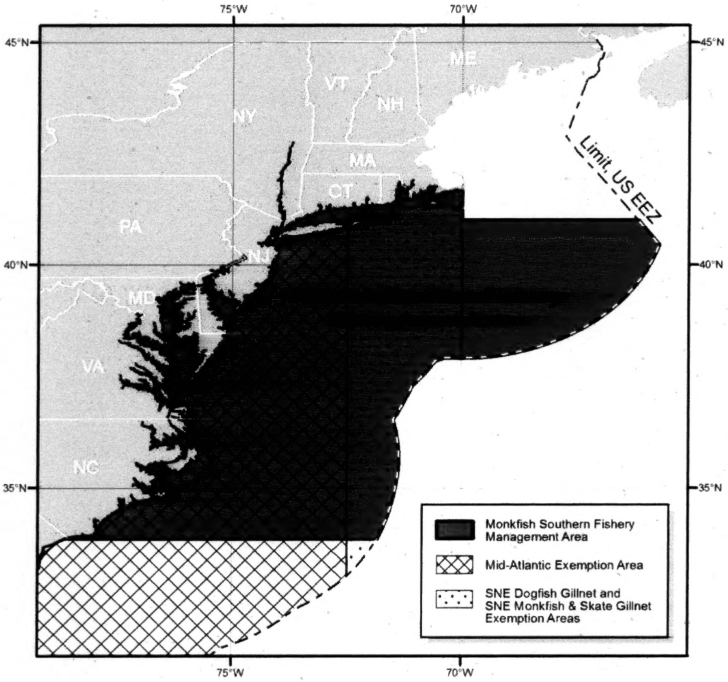
Note: Tail weight × 2.91 = whole weight.

A Category C or D vessel is still required to declare a trip at the dock under a NE multispecies A DAS with the option to declare a monkfish DAS while at sea, but can then declare a monkfish DAS while at sea in order or to be exempt from the monkfish possession limits. Alternately, a Category C or D vessel can declare a concurrent NE Multispecies A DAS and a monkfish DAS at the dock prior to starting a trip in order or to be exempt from the monkfish possession limits.

2. Minimum Mesh Size Requirements and Possession Limits in the SFMA

We are revising minimum mesh size and possession restrictions in different parts of SFMA (see Figure 1) to increase operational flexibility.

Figure 1. SNE Dogfish, Monkfish, and Skate Gillnet Exemption Area and Mid-Atlantic Exemption Area


75°W
70°W
45°N
40°N
35°N
ME
VT
NH
NY
MA
CT
PA
NJ
MD
VA
NC
Limit, US EEZ
Monkfish Southern Fishery Management Area
Mid-Atlantic Exemption Area
SNE Dogfish Gillnet and SNE Monkfish & Skate Gillnet Exemption Areas

This rule implements a measure that allows a Category C or D vessel fishing under both a NE multispecies and a monkfish DAS in the SFMA to use 6.5-inch (16.5-cm) roundfish gillnets. This rule also allows any monkfish-permitted vessel fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area to use 5-inch (12.7-cm) roundfish gillnets in the Mid-Atlantic Exemption Area. Finally, monkfish-permitted vessels fishing on a monkfish-only DAS in either the SNE Dogfish Gillnet Exemption Area or the SNE Monkfish and Skate Gillnet Exemption Area may retain both monkfish and dogfish on the same trip when declared into either area. This measure also limits a vessel to using 50 roundfish gillnets in the SNE Dogfish and the Mid-Atlantic Exemption Areas. Table 3 summarizes the approved measures (highlighted in bold) and also includes existing seasonal, gear, and DAS requirements.

Table 3. Summary of Approved (Bold) and Other Existing Requirements in the Monkfish SFMA

	NE Multispecies DAS anywhere in the SFMA	SNE Dogfish Gillnet Exemption Area	SNE Monkfish and Skate Gillnet Exemption Area	Mid-Atlantic Exemption Area
Minimum gillnet mesh	**6.5 inches (16.51 cm) for standup nets**	6 inches (15.24 cm) for standup nets	10 inches (25.4 cm) for all nets	**5 inches (12.7 cm) for standup nets**
DAS	**NE multispecies and monkfish**	Monkfish	Monkfish	**Monkfish**
Season	Year-round	May 1 – October 31	Year-round	**Year-round**
Gear Limits	All Trip gillnet vessels: Unlimited Day gillnet vessel in the GB RMA:50 gillnets Day gillnet vessel in the SNE RMA:75 gillnets Day gillnet vessel in the MA RMA: 75 gillnets	Category A/B: 160 gillnets Category C/D: 150 gillnets Roundfish gillnet limit: 50 gillnets	Category A/B: 160 gillnets Category C/D: 150 gillnets	**Category A/B: 160 gillnets** **Category C/D: 150 gillnets** **Roundfish gillnet limit: 50 gillnets**
Regulatory change to possess both Monkfish and Dogfish	No	**Yes**	**Yes**	**Yes**

A vessel taking advantage of these smaller minimum mesh size requirements must still comply with all other requirements of fishing in the SFMA or in the Exemption Areas. Existing monkfish possession limits for vessels issued a limited access monkfish permit and fishing in the SFMA would remain the same.

Disapproved Measure

NE Multispecies DAS Declaration Flexibility Measure

We are disapproving the Framework 9 measure that would have allowed a Monkfish Category C and D vessel enrolled in a NE multispecies sector, fishing exclusively in the NFMA under either a NE multispecies non-DAS sector trip or a monkfish-only DAS, to declare a NE multispecies A DAS while at sea through the vessel monitoring system (VMS). We are disapproving this measure because it is inconsistent with National Standards 5 and 7 and the NE Multispecies FMP. Specifically, our disapproval is based on this measure's limited utility for fishery participants, poor cost-to-benefit ratio, enforcement concerns, and inconsistency with the NE multispecies FMP at-sea monitoring program. A full description of our rationale is provided below.

This measure was intended to help increase operational flexibility and potentially increase monkfish landings in the NFMA. However, as proposed by the Councils, it would create a loophole that would allow a vessel to circumvent existing groundfish sector at-sea monitoring requirements, which would be inconsistent with the NE Multispecies FMP. We have determined that the measure itself and the proposed remedy to the monitoring loophole described in the proposed rule are not consistent with National Standards 5 and 7 of the Magnuson-Stevens Fishery Conservation and Management Act because administrative costs and burdens are not offset by meaningful benefits to the industry.

We raised several concerns with this measure in the proposed rule (see 81 FR 40838, 40839) and noted that we intended to further evaluate the potential cost/benefit of providing this at-sea declaration flexibility, as well as review comments, when considering the approvability of this measure. We specifically requested comments on this measure and our concerns in the proposed rule and received two comments generally supporting this measure from industry members. These comments provided no specific feedback on the monitoring loophole, justifications for the cost/benefits, or our request to address concerns related to approvability. In addition, we had extensive conversations about this measure with the New England Council during the regulatory deeming process. The New England Council did not comment in support of the measure, nor did the New England Council address the multiple concerns we raised.

We are disapproving this DAS flexibility measure for the following reasons:

1. Allowing a vessel to declare a NE multispecies A DAS after starting a trip on a monkfish-only DAS is inconsistent with the NE Multispecies FMP. This measure would have allowed a groundfish sector vessel to circumvent existing NE multispecies pre-trip notification requirements for deploying industry-funded at-sea monitors. Monitoring is a fundamental requirement of the NE multispecies sector system because it allows the sectors and NMFS to adequately monitor the catching and discards made by participating vessels.

2. It is inconsistent with National Standards 5 and 7 of the Magnuson-Stevens Act. If approved, the costs of this measure and potential remedies to the monitoring loophole far outweigh any potential benefits to the industry. This measure would have required VMS changes that were estimated by the agency to cost approximately $100,000 based on comparisons of other similar programmatic changes that required VMS vendors to reprogram for additional declaration codes. Other database changes in the pre-trip notification system and to accommodate bycatch moderating would also have been needed to address the loophole created in the NE multispecies monitoring program. These changes are not reflected in the $100,000 VMS change estimate.

Further, this measure would not have provided as many benefits as first anticipated. Framework 9 estimated that only a small percent (1.6 percent) of vessels approached applicable trip limits for non-DAS sector trips and monkfish-only trips in recent fishing years, indicating that few vessels would realize a benefit from this measure. During its development, this measure underwent several iterative changes wherein the universe of vessels that could potentially use the provision was reduced. Many of these changes were designed to address the concern raised in the proposed rule. Presently, sector vessels may only use monkfish-only DAS in an exempted fishery. The only exempted fishery that overlaps with the NFMA is in the Gulf of Maine/Georges Bank Dogfish and Monkfish Gillnet Exemption Area, as described in § 648.80(a)(13). Given that the majority of the fleet in the NFMA fishes with trawl gear and cannot take advantage of this opportunity because they are excluded from this exempted fishery, we were concerned that only a small number of vessels that use gillnet gear would benefit from this flexibility. In fact, additional agency analysis indicates that, in the last three years, only three vessels took four trips that would have been eligible to use the monkfish-only flexibility. These four trips resulted in landings worth approximately $12,000. National Standard 5 and 7 require that management measures consider efficiency in the utilization of fishery resources and minimize costs and avoid unnecessary duplication. Given this limited benefit and the costs associated with this DAS declaration flexibility, we have determined that this measure is inconsistent with National Standards 5 and 7.

In addition, we also raised concern in the proposed rule that allowing this measure would create enforcement concerns with regulatory discard requirements. A vessel declared out of the NE multispecies fishery and fishing in an exempted fishery is prohibited from retaining NE multispecies (must discard all groundfish); whereas a vessel fishing under a NE multispecies DAS is required to retain all legal size NE multispecies. If we had approved this measure, a vessel would have begun a trip discarding all NE multispecies, only to then be required to retain all legal-sized NE multispecies after declaring a NE multispecies DAS. There would be no way to monitor these discard requirements unless each trip making use of this provision was monitored.

Corrections and Clarifications to Existing Regulations

This final rule corrects a number of inadvertent errors, omissions, and ambiguities in existing regulations in order to ensure consistency with, and accurately reflect the intent of, previous actions under the FMP, or to more effectively administer and enforce existing and new provisions. These clarifications are being taken under the authority provided to the Secretary of Commerce in section 305(d) of the Magnuson-Stevens Act. The following measures are listed in the order in which they appear in the regulations.

In § 648.10, paragraphs (b)(3), (g)(1), (g)(3), and (g)(3)(i) through (ii) are revised to enhance readability and more clearly state the regulatory requirements.

In § 648.92, paragraph (b)(1)(i) is revised to enhance readability and more clearly state the regulatory requirements. A reference to the DAS requirements in the SFMA and adjustment for gear conflicts has also been removed, as these references are unnecessary. The reference to DAS requirement in the SFMA in § 648.92(b)(1)(ii) is not needed because that referenced section further explains how the overall DAS allocation may be used. The reference to adjustment for gear conflicts in § 648.96(b)(3) states that the Councils may develop recommendations to address gear conflicts. This reference is unnecessary because those measures would be captured in the regulations and appropriately cross-referenced.

In § 648.94, paragraph (b)(3)(i) is be revised to enhance readability and more clearly state the regulatory requirements. A reference to Category F permits has also been deleted for clarity because it may cause confusion with regard to the possession limits for Category F permits. Possession limit requirements for Category F permits are more clearly outlined in § 648.95.

Comments and Responses

Our proposed rule solicited comments for 15 days through July 8, 2016. We received nine comments from fishing industry members. A summary of the comments and our responses is provided below.

Comment 1: Six letters supported eliminating the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA. One stated that this measure was needed to help more fully harvest the quota. Another stated that this measure will help increase efficiency, decrease discards, and will promote the conservation of other stocks by promoting harvest of monkfish.

Response: We agree and are approving this measure. The Councils specifically designed this measure to "increase monkfish landings to more fully utilize the annual catch target in the NFMA." The Councils were also optimistic that this measure could benefit other fisheries by noting that it "could provide additional fishing revenue for groundfish vessels to help offset expected fishing revenue reductions associated with reduced groundfish quotas in NFMA in the near future . . ." While we cannot be certain that this measure will decrease discards, we recognize the potential benefit and encourage the Council to continue developing measures that reduce discards and discard mortality, as required by National Standard 9.

Comment 2: Three letters opposed removing the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA. These letters based this recommendation on overall questions about the stock assessment and uncertainty about growth rates, stock definition, and stock distribution.

Response: The Northeast Fisheries Science Center is in the process of completing a monkfish operational assessment update. This assessment process has raised questions about the validity of monkfish aging information included in previous stock assessments. These important issues could change the results of the ongoing or future assessments. The Councils will need to evaluate these future results, set catch advice, and adjust management measure taking this new information into account. Still, the best available scientific information indicates that the monkfish stock is not overfished, nor subject to overfishing. Further, the fishery has been under-harvested the past several years. We believe that eliminating the trip limit for Category C and D vessels fishing under both a NE multispecies and monkfish DAS in the NFMA is warranted and presents little to no risk to the northern stock. Moreover, should this measure increase catch to levels above the annual catch target, the FMP has accountability measures designed to prevent recurring overages.

Comment 3: Three letters supported revising minimum mesh size and possession requirements in the SFMA, two of which also noted support for the 50-net limit in certain exemption areas. These letters noted that these changes help align the regulations with historic practices of the fishery. Two letters also spoke to timing: One letter requested the regulations be approved by October when dogfish become available, while the other requested that these administrative changes be made as soon as possible.

Response: We are approving the suite of SFMA mesh and possession measures, sharing the Council's rationale that this measure "increases operational flexibility of monkfish operations by allowing vessels to target both monkfish and dogfish using different gear types when on a monkfish DAS." Monkfish are not overfished, nor subject to overfishing, and removing these administrative burdens to better align current regulations with historic practices will help the fishery better achieve optimum yield. To expedite the effective date of these measures, we are waiving the 30-day delay in effectiveness because this rule relieves restrictions. For more information on this waiver, please refer to the Classification section below.

Comment 4: Two letters generally supported the measure that would have allowed a Monkfish Category C and D vessel enrolled in a NE multispecies sector fishing exclusively in the NFMA under either a NE multispecies non-DAS sector trip or a monkfish-only DAS to declare a NE multispecies A DAS while at sea.

Response: As discussed above, we have disapproved this measure. We raised several concerns with the measure, noting that we would evaluate available data on potential use, the costs of implementation, and any public comments when considering the approvability of the measure. These two comments were very general and provided no additional information to address our noted concerns including the monitoring loophole, cost/benefits, or our request to address concerns related to approvability or justification in support of the measure. As discussed in Disapproved Measure, we have determined that this measure is inconsistent with the NE Multispecies FMP and National Standards 5 and 7, and have disapproved it.

Classification

The Administrator, Greater Atlantic Region, NMFS, determined that Framework 9 is necessary for the conservation and management of the monkfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because this rule relieves a restriction by increasing the trip limit in the NMFA and liberalizing gear and possession restrictions in the SFMA, it is not subject to the 30-day delayed effectiveness provision of the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1). The Councils developed these measures to increase monkfish landings and associated fishing revenue to more effectively achieve optimum yield in the fishery. Accordingly, delaying this action for 30-days is contrary to the public interest, because it would unnecessarily delay the industry's ability to take advantage of increased opportunities to catch and land monkfish and benefit from the associated economic benefits of higher monkfish landings. Further, since this rule imposes no further restrictions on the monkfish fishery that would alter existing fishing practices or require affected entities to acquire additional equipment, there is no need to delay implementation of this action to provide affected entities sufficient time to prepare or comply with the measures of this rule. Thus, there is good cause under 5 U.S.C. 553(d)(3) to waive the delay in effectiveness for this action.

This rule has been determined to be not significant for purposes of Executive Order 12866.

On December 29, 2015, the National Marine Fisheries Service (NMFS) issued a final rule establishing a small business size standard of $11 million in annual gross receipts for all businesses primarily engaged in the commercial fishing industry (NAICS 11411) for Regulatory Flexibility Act (RFA) compliance purposes only (80 FR 81194, December 29, 2015). The $11 million standard became effective on July 1, 2016, and is to be used in place of the U.S. Small Business Administration's (SBA) current standards of $20.5 million, $5.5 million, and $7.5 million for the finfish (NAICS 114111), shellfish (NAICS 114112), and other marine fishing (NAICS 114119) sectors of the U.S. commercial fishing industry in all NMFS rules subject to the RFA after July 1, 2016. Id. at 81194.

Pursuant to the Regulatory Flexibility Act, and prior to July 1, 2016, a certification was developed for this regulatory action using SBA's former size standards. NMFS has reviewed the analyses prepared for this regulatory action in light of the new size standard. Under the SBA's size standards, 16 shellfish businesses were determined not to be small. The new standard could result in a few more commercial shellfish businesses being considered small. In addition, the new standard could result in fewer commercial finfish businesses being considered small. Previously, all finfish businesses (206 businesses) were classified as small businesses. Based on analysis in the environmental assessment, we do not expect any of these finfish businesses to be classified as large under the new size standards. However, NMFS has determined that the new size standard does not affect its decision to certify this regulatory action. The action results in minimal, potentially slightly positive impacts on all regulated entities regardless of size.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 22, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.10, revise paragraphs (b)(3), (g)(1), (g)(3) introductory text, and (g)(3)(i) and (ii) to read as follows:

§ 648.10 VMS and DAS requirements for vessel owners/operators.

* * * * *

(b) * * *

(3) A vessel issued a limited access monkfish, Occasional scallop, or Combination permit, whose owner elects to provide the notifications required by this section using VMS, unless otherwise authorized or required by the Regional Administrator under paragraph (d) of this section;

* * * * *

(g) * * *

(1) The owner or authorized representative of a vessel that is required to or elects to use VMS, as

specified in paragraph (b) of this section, must notify the Regional Administrator of the vessel's intended fishing activity by entering the appropriate VMS code prior to leaving port at the start of each fishing trip except:

(i) If notified by letter, pursuant to paragraph (e)(1)(iv) of this section, or

(ii) The vessel is a scallop vessel and is exempted, as specified in paragraph (f) of this section.

* * * * *

(3) A vessel operator cannot change any aspect of a vessel's VMS activity code outside of port, except as follows:

(i) An operator of a NE multispecies vessel is authorized to change the category of NE multispecies DAS used (*i.e.,* flip its DAS), as provided at § 648.85(b), or change the area declared to be fished so that the vessel may fish both inside and outside of the Eastern U.S./Canada Area on the same trip, as provided at § 648.85(a)(3)(ii)(A).

(ii) An operator of a vessel issued both a NE multispecies permit and a monkfish permit are authorized to change their DAS declaration from a NE multispecies Category A DAS to a monkfish DAS, while remaining subject to the to the NE multispecies DAS usage requirements under § 648.92(b)(1)(i), during the course of a trip, as provided at § 648.92(b)(1)(iii)(A).

* * * * *

■ 3. In § 648.14, revise paragraph (m)(2)(i) to read as follows:

§ 648.14 Prohibitions.

* * * * *

(m) * * *

(2) * * *

(i) Fish with or use nets with mesh size smaller than the minimum mesh size specified in § 648.91(c) while fishing under a monkfish DAS, except as authorized by § 648.91(c)(1)(iii).

* * * * *

■ 4. In § 648.80,:

■ a. Revise the introductory text to paragraph (b)(2)(iv);

■ b. Revise paragraphs (b)(6)(i)(A), (b)(7)(i)(A) and (B);

■ c. Revise the introductory text to paragraph (c)(2)(v); and

■ d. Revise paragraph (c)(5).

The revisions read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(2) * * *

(iv) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet not stowed and not available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the SNE Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the SNE Dogfish Gillnet Exemption Area in accordance with the provisions specified under paragraph (b)(7)(i)(A) of this section; to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section; or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters. Day gillnet vessels must also abide by the tagging requirements in paragraph (a)(3)(iv)(C) of this section.

* * * * *

(6) * * *

(i) * * *

(A) A vessel fishing under the SNE Monkfish and Skate Gillnet Exemption may only fish for, possess on board, or land monkfish as specified in § 648.94(b), spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(7) * * *

(i) * * *

(A) A vessel fishing under the SNE Dogfish Gillnet Exemption may only fish for, possess on board, or land dogfish and the bycatch species and amounts specified in paragraph (b)(3) of this section, unless fishing under a monkfish DAS. A vessel fishing under this exemption while on a monkfish-only DAS may also fish for, possess on board, and land monkfish up to the amount specified in § 648.94.

(B) All gillnets must have a minimum mesh size of 6-inch (15.2-cm) diamond mesh throughout the net. A vessel fishing under this exemption while on a monkfish-only DAS may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

* * * * *

(c) * * *

(2) * * *

(v) *Gillnet vessels.* For Day and Trip gillnet vessels, the minimum mesh size for any sink gillnet, not stowed and not available for immediate use as defined in § 648.2, when fishing under a DAS in the NE multispecies DAS program or on a sector trip in the MA Regulated Mesh Area, is 6.5 inches (16.5 cm) throughout the entire net. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), to vessels fishing with gillnet gear under a monkfish-only DAS in the Mid-Atlantic Exemption Area in accordance with the provisions specified under paragraph (c)(5)(ii) of this section, or to vessels that have not been issued a NE multispecies permit and that are fishing exclusively in state waters.

* * * * *

(5) *MA Exemption Area.* (i) The MA Exemption Area is that area that lies west of the SNE Exemption Area defined in paragraph (b)(10) of this section.

(ii) *Monkfish/Spiny Dogfish Exempted Gillnet Fishery.* A vessel fishing on a monkfish-only DAS may fish with, use, or possess gillnets in the MA Exemption Area with a mesh size smaller than the minimum size specified in paragraph (b)(2)(iv) or (c)(2)(v) of this section, provided the vessel complies with the following requirements:

(A) *Number of nets.* Notwithstanding the provisions specified in paragraphs (c)(2)(v)(A) and (B) of this section and § 648.92(b)(8), a vessel fishing on a monkfish-only DAS within the MA Exemption Area may not fish with, possess, haul, or deploy more than 50 roundfish gillnets, as defined in § 648.2.

(B) *Minimum mesh size.* The minimum mesh size for any roundfish gillnet not stowed and available for immediate use by a vessel fishing on a monkfish-only DAS within the MA Exemption Area is 5 inches (12.7 cm) throughout the entire net.

(C) *Possession limits.* A vessel fishing on a monkfish-only DAS within the MA Exemption Area may fish for, possess on board, or land monkfish up to the amount specified in § 648.94, spiny dogfish up to the amount specified in § 648.235, and other incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

■ 5. In § 648.91, revise paragraph (c)(1)(iii) to read as follows:

§ 648.91 Monkfish regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(c) * * *

(1) * * *

(iii) *Gillnets while on a monkfish DAS.* The minimum mesh size for any gillnets used by a vessel fishing under a monkfish DAS is 10-inch (25.4-cm) diamond mesh, unless:

(A) The owner or operator of a limited access NE multispecies vessel fishing under a NE multispecies category A DAS with gillnet gear in the NFMA changes the vessel's DAS declaration to a monkfish DAS through the vessel's VMS unit during the course of the trip in accordance with the provisions specified under § 648.92(b)(1)(iii);

(B) A vessel issued a Category C or D limited access monkfish permit is fishing under both a monkfish and NE multispecies Category A DAS in the SFMA using roundfish gillnets, as defined at § 648.2, with 6.5-inch (16.5-cm) diamond mesh;

(C) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Mid-Atlantic Exemption Area using roundfish gillnets with a minimum mesh size of 5 inches (12.7 cm) in accordance with the provisions specified under § 648.80(c)(5); or

(D) A vessel issued a limited access monkfish permit is fishing on a monkfish-only DAS in the Southern New England Dogfish Exemption Area using roundfish gillnets with a minimum mesh size of 6 inches (15.2 cm) in accordance with the provisions specified under § 648.80(b)(7).

* * * * *

■ 6. In § 648.92, revise paragraph (b)(1)(i) to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(1) * * *

(i) *General provision.* Each vessel issued a limited access monkfish permit shall be allocated 46 monkfish DAS each fishing year, which must be used in accordance with the provisions of this paragraph (b), unless the permit is enrolled in the Offshore Fishery Program in the SFMA, as specified in paragraph (b)(1)(iv) of this section. The annual allocation of monkfish DAS to each limited access monkfish permit shall be reduced by the amount calculated in paragraph (b)(1)(v) of this section for the research DAS set-aside. Unless otherwise specified in paragraph (b)(2) of this section or under this subpart F, a vessel issued a limited access NE multispecies or limited access sea scallop permit that is also issued a limited access monkfish permit must use a NE multispecies or sea scallop DAS concurrently with each monkfish DAS utilized.

* * * * *

■ 7. In § 648.94, revise paragraphs (b)(1) and (b)(3)(i) to read as follows:

§ 648.94 Monkfish possession and landing restrictions.

* * * * *

(b) * * *

(1) *Vessels fishing under the monkfish DAS program in the NFMA*— (i) *Category A vessels.* A limited access monkfish Category A vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(ii) *Category B vessels.* A limited access monkfish Category B vessel that fishes exclusively in the NFMA under a monkfish DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iii) *Category C vessels.* A limited access monkfish Category C vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 1,250 lb (567 kg) tail weight or 3,638 lb (1,650 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A limited access monkfish Category C vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

(iv) *Category D vessels.* A limited access monkfish Category D vessel that fishes exclusively in the NFMA under a monkfish-only DAS may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A limited access monkfish Category D vessel that fishes exclusively in the NFMA under both a monkfish and NE multispecies DAS may possess and land an unlimited amount of monkfish. For every 1 lb (0.45 kg) of tail only weight landed, the vessel may land up to 1.91 lb (0.87 kg) of monkfish heads only, as described in paragraph (a) of this section.

* * * * *

(3) * * *

(i) *NFMA.* Unless otherwise specified in paragraph (b)(1) of this section, a vessel issued a limited access monkfish Category C permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 600 lb (272 kg) tail weight or 1,746 lb (792 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category D permit that fishes under a NE multispecies DAS, and not a monkfish DAS, exclusively in the NFMA may land up to 500 lb (227 kg) tail weight or 1,455 lb (660 kg) whole weight of monkfish per DAS (or any prorated combination of tail weight and whole weight based on the conversion factor for tail weight to whole weight of 2.91). A vessel issued a limited access monkfish Category C, D, or F permit participating in the NE Multispecies Regular B DAS program, as specified under § 648.85(b)(6), is also subject to the incidental landing limit specified in paragraph (c)(1)(i) of this section on such trips.

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[FR Doc. 2016–20483 Filed 8–25–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0053]

RIN 0579–AE22

Importation of Fresh Raspberry Fruit From Morocco Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh raspberry fruit from Morocco into the continental United States. As a condition of entry, the raspberries would have to be produced under a systems approach to mitigate for the fungus *Monilinia fructigena* and would have to be inspected prior to exportation from Morocco and found free of this pest. The raspberries would have to be imported in commercial consignments only, produced at registered places of production, and field inspected for signs of *M. fructigena* infection no more than 30 days prior to harvest in registered packinghouses. The raspberries would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met. Raspberry consignments would be subject to further inspection at the port of entry into the continental United States. This action would allow the importation of raspberries from Morocco while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before October 25, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0053.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0053, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0053* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Imports, Regulations, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of Morocco has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh raspberry fruit from Morocco to be imported into the continental United States.

As part of our evaluation of Morocco's request, we prepared a pathway initiated pest risk assessment (PRA), titled "Importation of Fresh Fruit of Raspberry (*Rubus idaeus* L.) into the Continental United States from Morocco" (February 2013). The PRA evaluated the risks associated with the importation of raspberries into the continental United States from Morocco.

The PRA identified one pest of quarantine significance present in Morocco that could be introduced into the United States through the importation of raspberries. According to our PRA, this pest, a fungus (*Monilinia fructigena* Honey ex Whetzel), is rated as high risk potential. Pests with high pest risk potential generally require measures in addition to inspection at the port of entry to mitigate risk.

APHIS prepared a risk management document (RMD) for the importation of fresh raspberry fruit from Morocco that identifies a systems approach of specific mitigation measures against the quarantine pest and concludes that those measures, along with the general requirements for the importation of fruits and vegetable, will be sufficient to prevent the introduction of the pest into the continental United States. Copies of the PRA and RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

Based on the recommendations of the RMD, we are proposing to allow the importation of raspberries from Morocco into the continental United States only if they are produced in accordance with a systems approach. The systems approach we are proposing would be added to the regulations in a new § 319.56–76. The proposed measures are described below.

General Requirements

Paragraph (a) of proposed § 319.56–76 would set out general requirements for the NPPO of Morocco and for growers producing fresh raspberries for export to the continental United States.

Paragraph (a)(1) of proposed § 319.56–76 would require the NPPO of Morocco to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–76. An operational workplan is an agreement developed between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Paragraph (a)(2) of proposed § 319.56–76 would state that raspberries from Moroccan can be imported in commercial consignments only. Produce grown commercially is less likely to be infested with plant pests than noncommercial shipments. Noncommercial shipments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Places of Production Requirements

Paragraph (b)(1) would require raspberries to be grown at a place of production that is registered with the NPPO of Morocco. All production sites participating in the raspberry export program would be required to register with the NPPO of Morocco. Registering places of production would allow APHIS and the NPPO of Morocco to trace back consignments of raspberries to the orchard of origin if a pest or disease of concern is detected after harvest.

M. fructigena is the most common cause of fruit rot in the fruit orchards in Europe and Asia, causing characteristic brown rot symptoms that can easily be identified during visual inspections. Therefore, proposed paragraph (b)(2) would require that, no more than 30 days prior to harvest, raspberries be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection. If the fungal disease is detected, the NPPO of Morocco would have to notify APHIS, at which point APHIS will prohibit the importation of raspberries into the continental United States from the place of production for the remainder of the season. The place of production may resume shipments of raspberries to the United States in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

Packinghouse Requirement

Paragraph (c)(1) of proposed § 319.56–76 would require that raspberries be packed in packinghouses that are registered with the NPPO of Morocco. Paragraph (c)(2) would state that the detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.

Phytosanitary Certificate

The NPPO of Morocco would be responsible for export certification, inspection, and issuance of a phytosanitary certificate. Paragraph (d) of proposed § 319.56–76 would require each consignment of raspberries imported from Morocco into the continental United States to be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the requirements of § 319.56–76 have been met and the consignment has been inspected and found free of *M. fructigena.*

Under the general conditions for the importation of fruits and vegetables in § 319.56–3, each consignment of raspberries would be subject to further inspection at the port of entry into the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The proposed rule would allow importation into the continental United States of fresh raspberries (*Rubus idaeus* L.) from Morocco under certain phytosanitary restrictions. Morocco produces around 4,000 metric tons (MT) of fresh raspberries per year. Between 2012 and 2014, Morocco exported a yearly average of about 3,650 MT of raspberries, mostly to Europe due to proximity and lower shipping costs. Morocco expects to export between 200 and 500 MT of fresh raspberries to the United States annually. At $1,580 per MT, the estimated value of these imports would be between $316,000 and $790,000.

The majority of U.S. raspberry farms are in three States: California, Oregon, and Washington. They are classified within the North American Industry Classification System (NAICS) under "Berry except Strawberry Farming" (NAICS 111334). For this industry classification, a business is considered to be a small entity if its annual receipts are not more than $750,000. The average 2012 market value of fruit crops sold by farms in this category was less than $135,000. We infer that most fresh raspberry production is by small entities.

In 2014, U.S. fresh raspberry production totaled 55,130 MT. Annual imports from Morocco of between 200 and 500 MT would be the equivalent of between 0.4 and 0.9 percent of U.S. fresh raspberry production.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action is not expected to affect the economy of the United States or to negatively affect producers of raspberries in the United States.

Executive Order 12988

This proposed rule would allow fresh raspberry fruit to be imported into the continental United States from Morocco under a systems approach. If this proposed rule is adopted, State and local laws and regulations regarding raspberries imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's

Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0053. Please send a copy of your comments to APHIS using one of the methods described under **ADDRESSES** at the beginning of this document.

This proposed rule would amend the fruits and vegetables regulations to allow the importation of fresh raspberry fruit from Morocco into the continental United States. As a condition of entry, the raspberries would have to be produced under a systems approach employing a combination of mitigation measures for one quarantine pest and would have to be inspected prior to exportation from Morocco and found free of this pest. The raspberries would have to be imported in commercial consignments and accompanied by a phytosanitary certificate with an additional declaration stating that the conditions for importation have been met.

Implementing this rulemaking would require additional information collection activities, such as production site and packinghouse registration, inspection, operational workplan, and the completion of a phytosanitary certificate.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.667 hours per response.

Respondents: Foreign business and the NPPO of Morocco.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 102.6.

Estimated annual number of responses: 513.

Estimated total annual burden on respondents: 342 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

APHIS is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are proposing to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–76 is added to read as follows:

§ 319.56–76 Fresh raspberries from Morocco.

Fresh fruit of raspberry (*Rubus idaeus* L.) may be imported into the continental United States from Morocco only under the conditions listed in this section. These conditions are designed to prevent the introduction of the fungus *Monilinia fructigena* Honey ex Whetzel.

(a) *General requirements.* (1) The national plant protection organization (NPPO) of Morocco must develop an operational workplan, subject to APHIS approval, that details the activities that the NPPO of Morocco would carry out to meet the requirements of this section.

(2) The raspberries may be imported in commercial consignments only.

(b) *Places of production requirements.* (1) Raspberry fruit must be grown at a place of production that is registered with the NPPO of Morocco.

(2) During the growing season, raspberries must be inspected in the field by the NPPO of Morocco for signs of *M. fructigena* infection no more than 30 days prior to harvest. If the fungal disease is detected, the NPPO of Morocco must notify APHIS. APHIS will prohibit the importation of raspberries from Morocco into the continental United States from the place of production for the remainder of the growing season. The exportation of raspberries from the rejected place of production may resume in the next growing season if an investigation is conducted and APHIS and the NPPO of Morocco agree that appropriate remedial actions have been taken.

(c) *Packinghouse requirements.* (1) Raspberries must be packed in packinghouses that are registered with the NPPO of Morocco.

(2) Detection of *M. fructigena* infection at a packinghouse may result in the suspension of the packinghouse until an investigation is conducted and APHIS and the NPPO of Morocco agree to appropriate remedial measures.

(d) *Phytosanitary certificate.* Each consignment of raspberries must be accompanied by a phytosanitary certificate issued by the NPPO of Morocco with an additional declaration stating that the conditions of this section have been met, and that the consignment has been inspected prior to export from Morocco and found free of *M. fructigena.*

Done in Washington, DC, this 22nd day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–20507 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0052]

RIN 0579–AE26

Importation of Fresh Persimmons From New Zealand Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning the importation of fruits and vegetables to allow the importation of fresh persimmons from New Zealand into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements. This action would allow the importation of fresh persimmons from New Zealand while continuing to protect against the introduction of plant pests into the United States.

DATES: We will consider all comments that we receive on or before October 25, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0052.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0052* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Lamb, Senior Regulatory Policy Specialist, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (7 CFR 319.56–1 through 319.56–75, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The national plant protection organization (NPPO) of New Zealand has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh persimmons (*Diospyros kaki* Thunb.) from New Zealand to be imported into the United States. As part of our evaluation of New Zealand's request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

The PRA, titled "Importation of Persimmon, *Diospyros kaki* Thunb., as Fresh Fruit from New Zealand into the Entire United States, Including Hawaii and U.S. Territories" (April 23, 2012) evaluates the risks associated with the importation of fresh persimmons from New Zealand into the United States. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the United States of fresh persimmons from New Zealand.

The PRA identified nine pests of quarantine significance present in New Zealand that could be introduced into the United States through the importation of fresh persimmons:

- The leafroller moths *Cnephasia jactatana* (Walker), *Ctenopseustis herana* (Felder and Rogenhofer), *Ctenopseustis obliquana* (Walker), *Epiphyas postvittana* (Walker), *Planotortrix excessana* (Walker), *Sperchia intractana* (Walker), *Stathmopoda skelloni* (Butler); and
- The fungi *Colletotrichum horii* B. Weir & P.R. Johnst. and *Cryptosporiopsis actinidiae* P.R. Johnst., M.A. Manning & X. Meier.

A quarantine pest is defined in § 319.56–2 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Potential plant pest risks associated with the importation of fresh persimmons from New Zealand into the United States were determined by estimating the consequences and likelihood of introduction of quarantine pests into the United States and ranking the risk potential as high, medium, or low. The PRA determined that four of these nine pests—*C. herana, C. obliquana, E. postvittana,* and *P. excessana*—pose a high risk of following the pathway of persimmons from New Zealand into the United States and having negative effects on U.S. agriculture. The remaining pests—*C. jactatana, C. horii, C. actinidiae, S. intractana,* and *S. skelloni*—were rated as having a medium risk potential.

Based on the conclusions of the PRA and the RMD, we have determined that measures beyond standard port of arrival inspection are required to mitigate the risks posed by these plant pests. Therefore, we are proposing to allow the importation of persimmons from New Zealand into the United States subject to a systems approach. The conditions in the systems approach that we are proposing are described below. These conditions would be added to the regulations in a new § 319.56–76.

General Requirements

Proposed paragraph (a) of § 319.56–76 would require the NPPO of New Zealand to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56–76. The operational workplan would have to include and describe in detail the quarantine pest survey intervals and other specific requirements in proposed § 319.56–76.

An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

Proposed paragraph (b) of § 319.56–76 would require persimmons from New Zealand to be imported only in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations/infections because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56–2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

Place of Production Requirements

Paragraph (c)(1) of proposed § 319.56–76 would require that all places of production (orchards) participating in the persimmon export program be registered with and approved by the NPPO of New Zealand in accordance with the requirements of the operational workplan.

Paragraph (c)(2) of proposed § 319.56–76 would require the NPPO of New Zealand or its approved designee[1] to visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping season and to apply appropriate pest controls in accordance with the operational workplan. APHIS may also monitor the places of production if necessary. If APHIS or the NPPO of New Zealand finds that a place of production is not complying with the requirements of the systems approach, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (d) of proposed § 319.56–76. Paragraph (d)(1) would require that all packinghouses participating in the persimmon export program be registered with and approved by the NPPO of New Zealand in accordance with the requirements of the operational workplan.

Paragraph (d)(2) would require that, during the time that the packinghouse is in use for exporting persimmons to the United States, the packinghouse would only be allowed to accept persimmons from registered places of production and that the persimmons be segregated from other fruit. This requirement would prevent persimmons intended for export to the United States from being exposed to or mixed with persimmons or other fruit that are not produced according to the requirements of the systems approach.

Paragraph (d)(3) would require that any diseased or insect-infested fruits and fruits with surface pests be culled either before or during packing and removed from the packinghouse. Culling would also include any damaged or deformed fruit. Fruit with broken or bruised skin or that is deformed is more susceptible to infestation by pests than undamaged fruit.

Paragraph (d)(4) would state that final shipping containers would have to be marked to identify the place of production and packinghouse from which the consignment of fruit originated. Such registration and container marking would facilitate traceback of a consignment of persimmon fruit to the place of production in which it was grown and the packinghouse in which it was packed in the event that quarantine pests were discovered in the consignment at the port of first arrival into the United States.

Paragraph (d)(5) would state that the NPPO of New Zealand must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of New Zealand finds that a packinghouse is not complying with the requirements of the systems approach, no persimmon fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and both agree that the pest risk has been mitigated.

Phytosanitary Inspection

Paragraph (e) of proposed § 319.56–76 would require that a biometric sample of persimmon fruit jointly agreed upon by APHIS and the NPPO of New Zealand be inspected in the exporting country by the NPPO of New Zealand following post-harvest processing. The biometric sample would be visually inspected for signs of disease, and a portion of the fruit would be cut open to detect internally feeding pests. If quarantine pests are found during sampling, the consignment of fruit would be prohibited from export to the United States.

Postharvest Treatment

Paragraph (f) of proposed § 319.56–76 would require that all persimmons undergo postharvest treatment with either hot water or modified atmosphere treatment. Under the hot water treatment, the persimmons would have to be held for 20 minutes in hot water at 50 °C (122 °F). This treatment has been shown to provide 100 percent mortality of leafroller moth larvae. In addition, hot water treatment reduces populations of fungal pathogens such as *C. horii* and *C. actinidiae* on fruit.

Under the modified atmosphere treatment, the persimmons would have to be packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days. As the fruit respire within the modified atmosphere bag, oxygen is consumed and carbon dioxide is produced which causes mortality of any leafrollers present. Modified atmosphere cold storage has been used by New Zealand for all persimmons exported to Australia since 2007. Since this treatment was initiated, there have been no quarantine pests detected in New Zealand persimmons exported to Australia. Treatment with either the described hot water or modified atmosphere treatments, in conjunction with other safeguards that would be required by the regulations for persimmons from New Zealand, would reduce the likelihood that persimmons will introduce injurious plant pests into the United States.

Phytosanitary Certificate

To certify that the fresh persimmon fruit from New Zealand has been grown and packed in accordance with the requirements of proposed § 319.56–76, paragraph (g) would require each consignment of fruit to be accompanied by a phytosanitary certificate issued by the NPPO of New Zealand, with an additional declaration stating that they were produced under and meet all the components of the systems approach and were inspected and found to be free of quarantine pests in accordance with the requirements.

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[1] An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the *Regulations.gov* Web site (see **ADDRESSES** above for instructions for accessing *Regulations.gov*).

APHIS is proposing to amend the regulations to allow the importation of fresh persimmon fruit (*Diospyros kaki*) into the entire United States from New Zealand subject to a systems approach. Most U.S. persimmon production takes place in California, where the 2011 value of production totaled about $13.6 million. The most recent data on U.S. persimmon imports show a total value of about $3 million in 2014. The wholesale value of the persimmon fruit for which New Zealand has requested import access would be about $90,000 initially. The value of future imports is forecast to reach about $330,000, or about 2 percent of the U.S. persimmon market.

The Small Business Administration's (SBA) small-entity standard for entities involved in fruit farming is $750,000 or less in annual receipts (NAICS 111339). It is probable that most or all U.S. persimmon producers are small businesses by the SBA standard. We expect any impact of the proposed rule for these entities would be minimal, given New Zealand's expected small share of the U.S. persimmon market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule would allow persimmons to be imported into the United States from New Zealand. If this proposed rule is adopted, State and local laws and regulations regarding persimmons imported under this rule would be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), reporting and recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send comments on the Information Collection Request (ICR) to OMB's Office of Information and Regulatory Affairs via email to *oira_submissions@omb.eop.gov,* Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2015–0052. Please send a copy of your comments to APHIS using one of the methods described under **ADDRESSES** at the beginning of this document.

APHIS is proposing to allow the importation of fresh persimmons from New Zealand into the United States. As a condition of entry, the persimmons would have to be produced in accordance with a systems approach that would include requirements for orchard certification, orchard pest control, post-harvest safeguards, fruit culling, traceback, sampling, and treatment with either hot water or modified atmosphere treatment. The persimmons would also have to be accompanied by a phytosanitary certificate with an additional declaration stating that they were produced under, and meet all the components of, the systems approach and were inspected and found to be free of quarantine pests in accordance with the proposed requirements.

Implementing this rule will require information collection activities, such as an operational workplan, production site and packinghouse registration, container markings, production site inspections, investigations and remedial action, packinghouse monitoring, sampling, treatment records, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.12 hours per response.

Respondents: Growers, exporters, packinghouses, and the NPPO of New Zealand.

Estimated annual number of respondents: 30.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 301.

Estimated total annual burden on respondents: 339 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

A copy of the information collection may be viewed on the *Regulations.gov* Web site or in our reading room. (A link to *Regulations.gov* and information on the location and hours of the reading room are provided under the heading **ADDRESSES** at the beginning of this proposed rule.) Copies can also be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727. APHIS will respond to any ICR-related comments in the final rule. All comments will also become a matter of public record.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the EGovernment Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information

Collection Coordinator, at (301) 851–2727.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–76 is added to read as follows:

§ 319.56–76 Persimmons From New Zealand.

Fresh persimmons (*Diospyros kaki* Thunb.) may be imported into the United States only under the conditions described in this section. These conditions are designed to prevent the introduction of the quarantine pests *Colletotrichum horii* B. Weir & P.R. Johnst., *Cnephasia jactatana* (Walker), *Cryptosporiopsis actinidiae* P.R. Johnst., M.A. Manning & X. Meier, *Ctenopseustis herana* (Felder and Rogenhofer), *Ctenopseustis obliquana* (Walker), *Epiphyas postvittana* (Walker), *Planotortrix excessana* (Walker), *Sperchia intractana* (Walker), and *Stathmopoda skelloni* (Butler).

(a) *Operational workplan.* The national plant protection organization (NPPO) of New Zealand must provide an operational workplan to APHIS that details the activities that the NPPO of New Zealand will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) *Commercial consignments.* Persimmons from New Zealand may be imported in commercial consignments only.

(c)(1) *Place of production requirements.* All places of production that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) The NPPO of New Zealand or its approved designee must visit and inspect the places of production monthly beginning at blossom drop and continuing until the end of the shipping season for quarantine pests. Appropriate pest controls must be applied in accordance with the operational workplan. If the NPPO of New Zealand finds that a place of production is not complying with the requirements of this section, no fruit from the place of production will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(d)(1) *Packinghouse requirements.* All packinghouses that participate in the export program must be approved by and registered with the New Zealand NPPO in accordance with the requirements of the operational workplan.

(2) During the time the packinghouse is in use for exporting persimmons to the United States, the packinghouse may only accept persimmons from registered approved places of production and the fruit must be segregated from fruit intended for other markets.

(3) All diseased or insect-infested fruit and fruit with surface pests must be culled either before or during packing and removed from the packinghouse. Culling must also include any damaged or deformed fruit.

(4) Each shipping container must be marked to identify the place of production and packinghouse from which the consignment of fruit originated.

(5) The NPPO of New Zealand must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of the systems approach. If the NPPO of New Zealand finds that a packinghouse is not complying with the requirements of this section, no fruit from the packinghouse will be eligible for export to the United States until APHIS and the NPPO of New Zealand conduct an investigation and appropriate remedial actions have been implemented.

(e) *Sampling.* Inspectors from the NPPO of New Zealand must inspect a biometric sample of the fruit from each consignment at a rate jointly agreed upon by APHIS and the NPPO of New Zealand. The inspectors must visually inspect for quarantine pests listed in the operational workplan required by paragraph (a) of this section and must cut fruit to inspect for quarantine pests that are internal feeders. If quarantine pests are detected in this inspection, the consignment will be prohibited entry into the United States.

(f) *Treatment.* Each consignment of persimmons must be subjected to a post-harvest treatment by either:

(1) *Hot water treatment.* The persimmons are held for 20 minutes in hot water at 50 °C (122 °F); or

(2) *Modified atmosphere treatment.* The persimmons are packed in semi-permeable polymeric bags and stored at 0 °C for a minimum of 28 days.

(g) *Phytosanitary certificate.* Each consignment of persimmons must be accompanied by a phytosanitary certificate of inspection issued by the New Zealand NPPO with an additional declaration stating that the fruit in the consignment were grown, packed, and inspected and found to be free of quarantine pests in accordance with the requirements of the systems approach.

Done in Washington, DC, this 22nd day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–20508 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2015–0051]

RIN 0579–AE20

Importation of Lemons From Chile Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would amend the fruits and vegetables regulations to list lemon (*Citrus limon* (L.) Burm. f.) from Chile as eligible for importation into the continental United States subject to a systems approach. This action will allow interested persons additional time to prepare and submit comments.

DATES: The comment period for the proposed rule published on April 4, 2016 (81 FR 19063) is reopened. We will consider all comments that we receive on or before September 26, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0051.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2015–0051, Regulatory Analysis and Development, PPD, APHIS, Station

3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2015-0051* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2240.

SUPPLEMENTARY INFORMATION: On April 4, 2016, we published in the **Federal Register** (81 FR 19063, Docket No. APHIS–2015–0051) a proposal to the fruits and vegetables regulations to list lemon (*Citrus limon* (L.) Burm. f.) from Chile as eligible for importation into the continental United States subject to a systems approach.

Our review of the information supporting the safe importation into the United States of citrus from Chile under the listed phytosanitary measures is examined in a commodity import evaluation document (CIED) titled "Importation of Fresh Lemons (*Citrus limon* (L.) Burm. F.), from Chile into the Continental United States Using a Systems Approach." The CIED was based on a pathway-initiated risk assessment (PRA), titled "Importation of Fresh Lemons (*Citrus limon* (L.) Burm. f.) from Chile into the Continental United States." The draft PRA was made available for review and comment on the APHIS Web page in 2014. However, we did not make the PRA available with the proposed rule for further review and comment. A commenter on the proposed rule asked that we make the PRA available again. In response to this comment we are making the PRA available for review and reopening the comment period. Copies of the CIED and PRA may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** or viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room).

Comments on the proposed rule were required to be received on or before June 3, 2016. We are reopening the comment period on Docket No. APHIS–2015–0051 for an additional 30 days. We will also consider all comments received between June 4, 2016, and the date of this notice. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–20506 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8847; Directorate Identifier 2016–NM–020–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by reports of two cases where the main landing gear (MLG) failed to fully extend; it was determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening fully. This proposed AD would require repetitive detailed inspections of the MLG fairing, fairing seal, door, and adjacent structures; and replacement or repair of affected parts and fasteners, or removal of the door, if necessary. This proposed AD would also require installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing, which would terminate the repetitive inspections. We are proposing this AD to detect and correct interference between the MLG door and the MLG fairing seal. Such interference could result in a MLG failing to fully extend, which could cause an unsafe asymmetric landing configuration.

DATES: We must receive comments on this proposed AD by October 11, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514 855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7303; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8847; Directorate Identifier 2016–NM–020 -AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2015–30, dated January 13, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> Two cases of main landing gear (MLG) failure to fully extend have been reported on model CL–600–2C10/–2D15/–2D24 aeroplanes. Investigation determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening.
>
> Although model CL–600–2E25 aeroplanes feature new MLG door design, similar interference between the MLG door and the MLG fairing seal could exist on aeroplanes listed in the Applicability section of this [Canadian] AD. An MLG failing to extend may result in an unsafe asymmetric landing configuration.
>
> This [Canadian] AD mandates the repetitive inspection and rectification, as required, of the MLG fairing and seal, MLG door, and adjacent structures, until the mandatory terminating action is completed.

The terminating action includes installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing, which would terminate the repetitive inspections. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847.

Related Service Information Under 1 CFR Part 51

We reviewed Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. The service information describes procedures for detailed inspections of the MLG fairing, fairing seal, door, and adjacent structures; replacement or repair of affected parts and fasteners and removal of the door. We have also reviewed Bombardier Service Bulletin 670BA–32–049, May 26, 2015. The service information describes procedures for installation of a safety guide in the MLG fairing and an increase of the spacing between the MLG door and the fairing.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 40 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection and Installation	50 work-hours × $85 per hour = $4,250	$0	$4,250	$170,000

We estimate the following costs to do any necessary replacements/removals that would be required based on the results of the proposed inspection. We have received no definitive data on the costs for the on-condition repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these replacements/removals/repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of damaged fairing seal.	6 work-hours × $85 per hour = $510 per seal replacement.	$921 per seal	$1,431 per seal replacement.	$57,240 per seal replacement.
Removal of MLG door	3 work-hours × $85 per hour = $255 per removal of MLG door.	$0	$255 per removal of MLG door.	$10,200 per removal of MLG door.

OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of MLG door	13 work-hours × $85 per hour = $1,105	$0	$1,105	$44,200

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Bombardier, Inc.: Docket No. FAA–2016–8847; Directorate Identifier 2016–NM–020–AD.

(a) Comments Due Date

We must receive comments by October 11, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2E25 (Regional Jet Series 1000) airplanes, certificated in any category, serial numbers 19002 through 19041.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of two cases where the main landing gear (MLG) failed to fully extend; it was determined that interference between the MLG door and the MLG fairing seal prevented the MLG door from opening fully. We are issuing this AD to detect and correct interference between the MLG door and the MLG fairing seal. Such interference could result in a MLG failing to fully extend, which could cause an unsafe asymmetric landing configuration.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection of MLG Fairing, Seal, Door, and Adjacent Structures

Within 660 flight hours after the effective date of this AD, conduct a detailed inspection for damage to the MLG fairing, fairing seal, door, and adjunct structures, and for missing parts and fasteners, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. Repeat the inspection thereafter at intervals not to exceed 660 flight hours until the installation required by paragraph (m) of this AD is done.

(h) Replacement of MLG Fairing Seal or Door Removal

If damage to the MLG fairing seal is found during any inspection required by paragraph (g) of this AD, before further flight, replace the seal, in accordance with Part B of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013; or remove the door, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013.

(i) Repair of the MLG Door or Door Removal

If damage to the MLG door is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO); or remove the door, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013.

(j) Repair of the MLG Fairing

If damage to the MLG fairing is found during any inspection required by paragraph (g) of this AD, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(k) Repair of the Adjacent Structure and Other Corrective Actions

If damage to the adjacent structure is found or if any part or fastener is found missing or damaged during any inspection required by paragraph (g) of this AD, before further flight, do the applicable actions specified in paragraphs (k)(1) and (k)(2) of this AD.

(1) Replace missing or damaged parts and fasteners, in accordance with Part A of the Accomplishment Instruction of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013, except where Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013, specifies to contact Bombardier, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) Repair damaged structure using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(l) Reinstallation of the MLG Inboard Door

For any MLG inboard door that has been removed as specified in paragraph (g), (h), or (i) of this AD: Reinstallation of the door, if accomplished, must be done in accordance with Part D of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013. Before further flight after any reinstallation, the inspection required by paragraph (g) of this AD must be done and the inspection must be repeated thereafter at the times specified in paragraph (g) of this AD until the installation required by paragraph (m) of this AD is done.

(m) Installation of a Safety Guide on the MLG Fairing and Increase of Spacing Between MLG Door and Fairing

Except as required by paragraph (n) of this AD: Within 6,600 flight hours or 36 months, whichever occurs first, after the effective date of this AD, install a safety guide on the MLG fairing and increase the spacing between the MLG door and the fairing, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–049, dated May 26, 2015. Accomplishment of these actions terminates the requirement of paragraph (g) of this AD.

(n) Provisions for Removed/Reinstalled Doors

If the MLG door has been removed in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–32–041, dated March 28, 2013, the installation required by paragraph (m) of this AD may be delayed until the MLG door is reinstalled in accordance with paragraph (l) of this AD. When the removed MLG door is reinstalled, the installation required by paragraph (m) of this AD must be done at the time specified in paragraph (m) of this AD or before further flight after reinstallation of the removed MLG door, whichever occurs later.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(p) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2015–30, dated January 13, 2016, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8847.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 18, 2016.

Dorr M. Anderson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–20378 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, and 249

[Release Nos. 33–10127; 34–78652; File No. S7–10–16]

RIN 3235–AL53

Extension of Comment Period for Modernization of Property Disclosures for Mining Registrants

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release proposing revisions to the property disclosure requirements for mining registrants and related guidance [Release Nos. 33–10098 and 34–78086 (June 16, 2016)], published June 27, 2016. The original comment period is scheduled to end on August 26, 2016. The Commission is extending the time period in which to provide the Commission with comments until September 26, 2016. This action will allow interested persons additional time to analyze the issues and prepare their comments.

DATES: The comment period for the proposed rule published June 27, 2016, at 81 FR 41651, is extended. Comments should be received on or before September 26, 2016.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–10–16 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–16. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the SEC's Web site. To ensure direct electronic receipt of such notifications, sign up through the "Stay Connected" option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, in the Division of Corporation Finance, at (202) 551–3450, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has requested comment on a release proposing revisions to the property disclosure requirements for mining registrants and related guidance, currently set forth in Item 102 of Regulation S–K under the Securities Act of 1933 and the Securities Exchange Act of 1934 and in Industry Guide 7. The proposed revisions would modernize the Commission's disclosure requirements and policies for mining properties by more closely aligning them with current industry and global regulatory practices and standards. In addition, the proposed revisions would rescind Industry Guide 7, amend section 102 of Regulation S–K, add new exhibit (96) to Item 601 of Regulation S–K, add new subpart 1300 of Regulation S–K, amend Form 1–A and amend Form 20–F.

The Commission originally requested that comments on the release be received by August 26, 2016. The Commission has received requests for an extension of time for public comment on the proposal to, among other things, allow for a more complete assessment of the numerous provisions of the proposed rules, including a fuller consideration of their implications, and to improve the quality of responses.[1]

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[1] *See* letter from Michael Johnson, President and CEO of the National Stone, Sand and Gravel Association (July 5, 2016); letter from Douglas Curreault II, Deputy General Counsel and Corporate Secretary of Freeport-McMoran Inc. (August 8, 2016); letter from Katie Sweeney, General Counsel of the National Mining Association (August 15,

Continued

The Commission believes that providing the public additional time to consider thoroughly the matters addressed by the release and to submit comprehensive responses to the release would benefit the Commission in its consideration of final rules. Therefore, the Commission is extending the comment period for Release Nos. 33–10098 and 34–78086, "Modernization of Property Disclosures for Mining Registrants," until September 26, 2016.

By the Commission.

Dated: August 23, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–20548 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 702

RIN 1240–AA06

Longshore and Harbor Workers' Compensation Act: Maximum and Minimum Compensation Rates

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Workers' Compensation Programs is proposing rules to implement the Longshore and Harbor Workers' Compensation Act's maximum and minimum compensation provisions. Some of these provisions, which cap the amounts of compensation and death benefits payable to entitled claimants and provide a floor below which compensation may not fall, have become the topic of litigation. The proposed rules would clarify how the Department interprets and applies these provisions. In addition, the proposed rules would implement the Act's annual compensation-adjustment mechanism for permanent total disability compensation and death benefits.

DATES: The Department invites written comments on the proposed regulations from interested parties. Written comments must be received by October 25, 2016.

ADDRESSES: You may submit written comments, identified by RIN number 1240–AA06, by any of the following methods. To facilitate the receipt and processing of comment letters, OWCP encourages interested parties to submit their comments electronically.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *Fax:* (202) 693–1380 (this is not a toll-free number). Only comments of ten or fewer pages (including a Fax cover sheet and attachments, if any) will be accepted by Fax.
- *Regular Mail or Hand Delivery/Courier:* Submit comments on paper to the Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–4319, 200 Constitution Avenue NW., Washington, DC 20210. The Department's receipt of U.S. mail may be significantly delayed due to security procedures. You must take this into consideration when preparing to meet the deadline for submitting comments.

Instructions: All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: To read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Antonio Rios, Director, Division of Longshore and Harbor Workers' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room C–4319, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202)–693–0038 (this is not a toll-free number). TTY/TDD callers may dial toll free 1–877–889–5627 for further information.

SUPPLEMENTARY INFORMATION:

I. Background of This Rulemaking

The Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901–50 (LHWCA or Act), establishes a federal workers' compensation system for an employee's disability or death arising in the course of covered maritime employment. 33 U.S.C. 903(a), 908, 909. This proposed rule would implement the Act's provisions on maximum and minimum amounts of compensation payable.

A. The Act's Compensation Scheme

Disability, which the Act defines as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury," 33 U.S.C. 902(10), "is in essence an economic, not a medical concept." *Metro. Stevedores* v. *Rambo*, 515 U.S. 291, 297 (1995). From its inception in 1927, the Act has provided that "the average weekly wage of the injured employee at the time of the injury" must be used as the basis for computing his or her compensation rate. 33 U.S.C. 910. Thus, "[a]n employee's compensation depends on the severity of his disability and his preinjury pay." *Roberts* v. *Sea-Land Services, Inc.*, 566 U.S. ____, 132 S.Ct. 1350, 1354 (2012).

Several statutory sections have an impact on determining the amount of compensation payable. Section 10, "Determination of Pay," 33 U.S.C. 910, is the starting point in the statutory scheme. It sets out rules for calculating the employee's average weekly wage (AWW) as of the time of the employee's disabling injury. This AWW serves as the basis for all future benefit calculations for that worker throughout the life of his or her claim.

The second step is to determine what percentage of the employee's AWW a claimant will receive in compensation. This is determined under section 8, "Compensation for Disability," and section 9, "Compensation for Death," 33 U.S.C. 908, 909. Compensation payable for disability varies based on the nature and extent of an employee's disability. Section 8 establishes four basic categories of disability: Permanent total, temporary total, permanent partial, and temporary partial. 33 U.S.C. 908(a)–(c), (e). In general, an injury is "total" if the worker is unable to work after the injury and "partial" if the worker is able to work at a diminished wage. A disability is "temporary" if the employee's medical condition is improving and becomes "permanent" when he or she reaches maximum medical improvement. *See* 33 U.S.C. 908(a)–(c), (e); *see also Potomac Elec. Power Co.* v. *Director, OWCP*, 449 U.S. 268 (1980). And section 9 provides compensation payable to the employees' eligible survivors for injuries causing death. 30 U.S.C. 909.

For all disability categories, the Act uses a "two-thirds" rule to compute compensation. Totally disabled employees—those who are unable to return to their original employment or earn wages in suitable alternative employment—receive two-thirds the AWW they were earning at the time of injury. 33 U.S.C. 908(a)–(b). Partially disabled employees—those who experience the loss or loss-of-use of body parts specified in the statute—are entitled to two-thirds of their date-of-injury AWW for a specified number of weeks. 33 U.S.C. 908(c)(1)–(19). Other partially disabled employees—those

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2016); and letter from Jeffrey Klenda, Chair of Ur-Energy Inc. (August 19, 2016). Comments are available on the Commission's Web site at: *https://www.sec.gov/comments/s7-10-16/s71016.htm.*

who are able to work after their injuries at a diminished wage—receive two-thirds of the difference between their pre-disability AWW and their residual earning capacity (*i.e.*, the post-injury wages they earn or could earn through suitable alternative employment). *See* 33 U.S.C. 908(c)(21), (e). Finally, the compensation rate for survivors of an employee who suffers a work-related death is usually based on the deceased employee's AWW at the time of death, and, with certain exceptions, can be as high as two-thirds of that wage. 33 U.S.C. 909(b).

The third step is to apply the statute's compensation-limiting rules. Despite the general two-thirds rule, section 6, "Compensation," 33 U.S.C. 906, both caps the compensation amounts that can be received (a "maximum") and provides a floor below which compensation may not fall (a "minimum"). These limits are applied after calculating two-thirds of the worker's date-of-injury AWW. The Act sets the maximum for all disability compensation categories at 200 percent of the "applicable national average weekly wage." 33 U.S.C. 906(b)(1). Total compensation for death—the amount payable to all survivors in the aggregate—is also limited to that 200-percent figure, or to the deceased employee's AWW, whichever is less. 33 U.S.C. 909(e)(1); *Donovan* v. *Newport News Shipbuilding & Dry Dock Co.*, 31 BRBS 2 (1997). The Act sets the minimum for total disability compensation at the lower of: (1) 50 percent of the applicable national average weekly wage; or (2) the employee's actual AWW. 33 U.S.C. 906(b)(2). The Act does not provide minimums for the remaining compensation categories.

The Secretary of Labor determines the national average weekly wage before October 1 of each year, and it applies for a fiscal year (FY), from October 1 until the next September 30. 33 U.S.C. 906(b)(3). A given fiscal year's national average weekly wage, and the resulting maximum and minimum rates, apply to "employees or survivors *currently receiving* compensation for permanent total disability or death during such [fiscal year], as well as those *newly awarded* compensation during such [fiscal year]." 33 U.S.C. 906(c) (emphasis added). Under the "currently receiving" clause, the maximum rate for claimants receiving benefits for permanent total disability or death is "adjusted each fiscal year—and typically increases, in step with the usual inflation-driven rise in the national average weekly wage." *Roberts*, 132 S.Ct. at 1354 n.2. In fact, because the national average weekly wage has risen every year since Congress added this self-adjustment feature to section 6 in 1972, each year's maximum rate has risen as well. Thus, applying a later fiscal year's maximum generally results in a higher compensation rate.

Finally, in addition to section 6's provisions allowing adjustments to the maximum compensation rate, section 10(f) provides another mechanism for adjusting compensation amounts over time. "[B]enefits payable for permanent total disability or death" are increased at the beginning of each fiscal year (October 1) by the same percentage as any increase in the national average weekly wage (as calculated under section 6), but no more than 5 percent. 33 U.S.C. 910(f). The primary difference between the two adjustment provisions is that section 10(f) applies to all claimants receiving compensation for permanent total disability or death, while section 6(c) assists only those affected by the maximum rate. Through these provisions, compensation payable to a claimant each year increases by the same amount as wage-growth generally, ensuring that the value of the workers' compensation is not eroded over time.

In recent litigation, disputes have arisen over which fiscal year's maximum rate or rates apply to a given claimant, specifically: (1) In what fiscal year is a claimant "newly awarded compensation"; and (2) in what fiscal year is a claimant "currently receiving compensation for permanent total disability or death." On the first question, the dispute is whether a claimant is "newly awarded compensation" when he or she first becomes disabled—and therefore entitled to compensation—or when an administrative law judge issues a compensation order. On the second question, the dispute is whether a claimant is "currently receiving compensation for permanent total disability" when he or she first becomes permanently totally disabled or when he or she actually receives compensation for permanent total disability.

The Supreme Court resolved the first of these questions in its *Roberts* decision. But the second issue has not been addressed by all circuits around the country, and thus remains subject to litigation. The proposed rules would codify the Supreme Court's decision, resolve the second issue in a manner consistent with the courts that have addressed it, implement other aspects of the Act's maximum and minimum compensation provisions, and address the related section 10(f) annual adjustment provision.

B. Section 6(c)'s "Newly Awarded Compensation During Such Period" Clause

The Supreme Court construed this part of section 6(c) in *Roberts* and held "that an employee is 'newly awarded compensation' when he first becomes disabled and thereby becomes statutorily entitled to benefits, no matter whether, or when, a compensation order issues on his behalf." 132 S.Ct. at 1363. Mr. Roberts was injured and became disabled in FY 2002. An administrative law judge (ALJ) order awarding compensation, however, was not issued until FY 2007. While Mr. Roberts' employer initially made some compensation payments, it stopped in May 2005 and did not resume payments until after the ALJ's FY 2007 order. The ALJ found that Mr. Roberts' disability was: Temporary total from March 11, 2002, to July 11, 2005; permanent total from July 12, 2005, to October 9, 2005; and permanent partial beginning on October 10, 2005. *Roberts* v. *Director, Office of Workers' Compensation Programs*, 625 F.3d 1204, 1205 (9th Cir. 2010). Because the employer had ceased paying compensation in May 2005, before Mr. Roberts' period of permanent total disability, it did not pay him for that disability until after the ALJ's order in FY 2007.

The ALJ found that Mr. Roberts' compensation rate for total disability—two-thirds of his AWW—was $1,902.05, and that his compensation rate for permanent partial disability—two-thirds of the difference between his average weekly and his residual wage-earning capacity—was $1,422.05. He found, however, that Mr. Roberts was subject, for all periods of disability, to the maximum rate of $966.08 in effect during FY 2002, because that was when he first became disabled, and was thus "newly awarded compensation." *Id.* at 1206. On Mr. Roberts' motion for reconsideration, the ALJ determined that he had applied the wrong maximum rate for the period from October 1, 2005, through October 9, 2005. The ALJ found that Mr. Roberts was entitled to the FY 2006 maximum rate of $1,703.64 per week for that period because he was "currently receiving compensation for permanent total disability" during that time. *Id.*

The Benefits Review Board, relying on its earlier decision in *Reposky* v. *Int'l Transp. Services*, 40 BRBS 65, 74–76 (2006) (holding that a claimant is newly awarded compensation "when benefits commence, generally at the time of injury"), affirmed the ALJ's decision. The Ninth Circuit followed suit. In affirming the ALJ's decision, it held that an injured employee is ''newly awarded'' compensation when he or she first becomes entitled to compensation rather than when a formal compensation order is issued. *Roberts,* 625 F.3d at 1208. Although Mr. Roberts argued that ''awarded'' could mean only ''assigned by formal order in the course of adjudication,'' and that ''newly awarded'' must therefore mean newly issued a compensation order, *id.* at 1206, the court rejected that argument. It reasoned that the LHWCA sometimes uses ''awarded'' to mean ''entitled to.'' It found that use applied to section 6, and held that a claimant is ''newly awarded'' compensation when he first becomes entitled to compensation, which is when he first becomes disabled.

The Supreme Court agreed with the Ninth Circuit's interpretation of section 6(c)'s ''newly awarded compensation'' clause. The Court acknowledged that Mr. Roberts' contrary view was ''appealing'' because ''[i]n ordinary usage, 'award' most often means 'give by judicial decree' or 'assign after careful judgment.' '' *Roberts,* 132 S. Ct. at 1356 (quoting Webster's Third New International Dictionary 152 (2002)). It recognized, however, that ''award'' can also mean ''grant'' or ''confer or bestow upon.'' Thus, deciding that ''the text of § 906(c), in isolation, is indeterminate[,]'' the Court considered its function in the context of the statute as a whole. *Id.* at 1357. The Court concluded that in the Act's ''comprehensive, reticulated regime for worker benefits—in which § 906 plays a pivotal role—'awarded compensation' is much more sensibly interpreted to mean 'statutorily entitled to compensation because of disability,' '' *id.* at 1357, than ''awarded compensation in a formal order.'' *Id.* at 1356.

The Court gave several reasons for its holding. First, the Court recognized that construing ''newly awarded compensation'' to mean a formal compensation order would be ''incompatible with the Act's design.'' *Id.* at 1357. The Court reasoned that this construction of the clause would be impossible to apply in the many cases where benefits are paid voluntarily and a formal compensation order is never issued. Noting that the three provisions of section 6 that relate to the maximum compensation rate ''work together to cap disability benefits,'' and that section 6(b)(1)'s cap on benefits ''applies globally, to all disability claims,'' the Court concluded that section 6(c)'s ''newly awarded'' clause must also apply globally. *Id.* at 1358.

Second, the Court examined the Act's administrative structure, which requires employers to pay compensation within 14 days after the employer knows of the worker's injury (*see* 30 U.S.C. 914(b)). It determined that using the national average weekly wage at the time of disability to determine the applicable maximum ''coheres'' with that structure. *Roberts,* 132 S. Ct. at 1358. The Court recognized that the employer, as well as OWCP, must be able to calculate the amount of compensation due at the time of payment, a calculation that necessarily includes consideration of any applicable cap. Because an employer is ''powerless to predict'' future events related to the compensation claim or what a later national average weekly wage will be, the court reasoned that ''[i]t is difficult to see how an employer can apply or certify a national average weekly wage other than the one in effect at the time an employee becomes disabled.'' *Roberts,* 132 S. Ct. at 1358–59.

Reading section 6(c) in the context of the Act's comprehensive scheme, the Court further explained that ''applying the national average weekly wage for the fiscal year in which an employee becomes disabled advances the LHWCA's purpose to compensate disability,'' which focuses on wages at the time of the injury as the basis to compute compensation. *Id.* at 1359 (*citing* 33 U.S.C. 902(10)). It is thus ''logical to apply the national average weekly wage for the same point in time.'' *Id.*

Moreover, the Court found that applying the date-of-disability maximum rate as suggested by the Director and Employer ''avoids disparate treatment of similarly situated employees . . . who earn the same salary and suffer the same injury on the same day.'' *Id.* at 1359. By contrast, Mr. Roberts' approach could subject such employees to different rates based solely on the ''happenstance of their obtaining orders in different fiscal years.'' *Id.*

Third, the Court believed its approach ''discourages gamesmanship in the claims process.'' *Id.* at 1360. Using the date a compensation order issues would encourage claimants to delay the adjudication process or initiate additional administrative proceedings seeking to take advantage of a later year's national average weekly wage. At the same time, an employer who promptly pays compensation at the correct rate would be subject to an increased cap retroactively for those payments based on a later compensation order. The Court refused to ''reward'' claimants with these ''windfalls'' while ''punishing'' employers who have met their statutory obligations. *Id.*

C. Section 6(c)'s ''Currently Receiving Compensation for Permanent Total Disability or Death Benefits During Such Period'' Clause

While the Supreme Court's *Roberts* decision settled the interpretation of the ''newly awarded'' clause, the Court declined to consider section 6(c)'s ''currently receiving'' clause, leaving the phrase's correct interpretation open to further litigation. The Ninth Circuit *Roberts* court had interpreted the ''currently receiving'' clause consistently with the ''newly awarded'' clause, noting that ''[u]nder both clauses, the inquiry into the applicable maximum rate focuses on an employee's *entitlement* to compensation.'' *Roberts,* 625 F.3d at 1208. It held that ''the 'currently receiving' clause of section 6(c) unambiguously refers to the period during which an employee was entitled to receive compensation for permanent total disability, regardless of whether his employer actually paid it.'' *Id.* at 1209. Consequently, the court determined that Mr. Roberts was ''currently receiving compensation for permanent total disability'' as of July 12, 2005, and thus entitled to the FY 2005 maximum rate from that date through September 30, 2005 (the end of FY 2005), and to the FY 2006 rate from October 1, 2005, through October 9, 2005. Beginning October 10, 2005—when Mr. Roberts regained an earning capacity, making his disability permanent partial—the court concluded he was once again subject to the FY 2002 maximum rate. *Id.* at 1206, 1209.

Although the Eleventh Circuit initially disagreed with the Ninth Circuit's construction of the ''currently receiving'' clause, *Boroski* v. *DynCorp Int'l,* 662 F.3d 1197 (11th Cir. 2011), that court reversed its position after the Supreme Court decided *Roberts. Boroski* v. *DynCorp Int'l,* 700 F.3d 446 (11th Cir. 2012) *on remand from* 132 S.Ct. 2430 (2012). Mr. Boroski was first disabled by his work-related injury in April 2002. His employer, DynCorp International, timely contested his compensation claim and thus did not voluntarily pay him compensation. An ALJ entered an order in FY 2008 awarding him permanent total disability compensation from 2002 and continuing. DynCorp based its subsequent payments on the maximum compensation rate applicable for FY 2002, and adjusted the amount upward each year, beginning on October 1, 2002, as required by section 10(f). Mr. Boroski objected, arguing that he was not ''currently receiving compensation for permanent total disability'' until FY 2008, when the employer actually began paying him, and was thus entitled to the FY 2008 maximum rate from the outset.

The Eleventh Circuit rejected Mr. Boroski's argument and held that "'currently receiving compensation' in § 906(c) means 'currently entitled to compensation.'" *Boroski,* 700 F.3d at 451. The court agreed with the Director that for each year after 2002 during which Mr. Boroski was entitled to compensation for permanent total disability, he was "currently receiving compensation for permanent total disability," and thus subject to the new fiscal year's maximum rate, regardless of when the compensation was actually paid.

Taking its analytical lead from the Supreme Court in *Roberts,* the *Boroski* court considered the "currently receiving" clause's role in the context of the entire statute. The court noted that using the maximum for the year in which compensation was actually paid (2008) rather than for the first year Mr. Boroski was disabled (2002) would lead to "*two different and irreconcilable weekly benefit payment amounts*" under the Supreme Court's interpretation of the "newly awarded" clause, which also applied to his compensation calculation. *Id.* at 451. The Director's contrary interpretation instead harmonized the two clauses of section 6(c).

The court also found the Director's position more consistent with section 10(f)'s annual adjustment mechanism. The court reasoned that the Director's interpretation of the "currently receiving" clause operates similarly, "gradually increasing benefits to maintain the *value* of an injured employee's wages, determined 'at the time of the injury.'" *Id.* at 452. Mr. Boroski's interpretation—under which "employers who first pay benefits to an injured employee in a year other than the year of the injury would pay all past due payments based on the national average weekly wage *for the year in which the first payment is made* . . . effectively giv[ing] the injured employee a raise to the later year's national average weekly wage, and would make that raise *retroactive to the date of his disability*"—would be "incongruous" with section 10(f). *Id.* at 452. The court also rejected Mr. Boroski's assertion that Congress intended his interpretation to encourage prompt payment of benefits. The court noted that claimants are entitled to interest on late payments of compensation, and found that interest both adequately compensates claimants for the delayed receipt of benefits and discourages employers from refusing to promptly pay legitimate claims.

Finally, the court determined that the Director's interpretation avoided disparate treatment of similarly situated claimants. "Under the Director's interpretation, Boroski receives the same benefits as a similarly situated employee who was first injured *and* who first received payment in 2002, and, additionally, Boroski receives interest on all late payments, to compensate him for the delay." *Id.* at 453. By contrast, under Mr. Boroski's interpretation—in which Mr. Boroski "would receive, in addition to interest, higher benefits for the same period of disability than claimants who timely receive their benefits"—the same hypothetical employee "would receive approximately $30,000 less than Boroski." *Id.*

For all of these reasons, the Eleventh Circuit held, as had the Ninth Circuit in *Roberts,* that an employee is "currently receiving compensation for permanent total disability" when he is entitled to such compensation, not when he is actually paid that compensation. To date, the remaining circuits have not weighed in on this issue.

The Benefits Review Board subsequently reached the same conclusion as the Ninth and Eleventh Circuits. *Lake* v. *L–3 Communications,* 47 BRBS 45 (2013). In *Lake,* the Board held that a claimant is "currently receiving compensation" under section 6(c) "during a period in which he is entitled to receive such compensation, regardless of whether his employer actually pays it." *Id.* at 48. The Board also held that when a claimant's temporary total disability changes to permanent total disability during a fiscal year, the maximum rate in effect during that year applies immediately. *Id.* at 48. In reaching this conclusion, the Board overruled this portion of its earlier contrary decision in *Reposky,* 40 BRBS at 65. The Board thus held that the FY 2009 maximum rate applied as of December 10, 2008, the date that Mr. Lake's entitlement to permanent total disability benefits commenced, until the next October 1, when the new fiscal year's maximum rate applied.

The Board also addressed a related question on the interplay between sections 6 and 10(f) in *Lake.* The employer argued that Mr. Lake, who first reached permanent total disability status in FY 2009, was not entitled to the FY 2009 maximum rate. Instead, the employer contended that he was limited to a section 10(f) increase on the FY 2006 maximum rate that he had been receiving since his injury, followed by a section 10(f) adjustment each subsequent October 1. The Board rejected this argument. Citing its earlier contrary holding in *Marko* v. *Morris Boney Co.,* 23 BRBS 353 (1990), the Board reiterated its conclusion that, "in a permanent total disability case in which two-thirds of the claimant's actual [AWW] exceeds the Section 6(b)(3) statutory maximum rate, he is entitled to the benefit of the new maximum rate each fiscal year . . . until such time as two-thirds of his actual average weekly wage falls below 200 percent of the applicable [national average weekly wage], and then annual adjustments under Section 10(f) apply." *Lake,* 47 BRBS at 50. The Board found its holding compelled by the plain language of section 6(c) and supported by the Ninth Circuit's *Roberts* decision.

II. Summary of the Proposed Rule

A. General Information

As discussed in the Section-by-Section Explanation below, this proposed rule implements the Act's provisions governing the maximum and minimum amount of disability compensation and death benefits payable. The proposed regulations do not govern general compensation calculations (referred to in the rules as the "calculated compensation rate"), and the fact that compensation payable is subject to these maximum and minimum rates does not mean that claimants are necessarily entitled to them. Rather, the proposed regulations simply provide that disability compensation and death benefits can go no higher than the applicable maximum rate or lower than the applicable minimum rate.

The proposed rule includes two subparts. Subpart G describes the annual adjustment to compensation and death benefits provided under section 10(f) of the Act, 33 U.S.C. 910(f). While section 10(f) allows for an annual adjustment to all payments of compensation for permanent total disability or death benefits, including those cases where neither the maximum nor the minimum rates are implicated, the Department has included section 10(f) in this rulemaking because its application can be closely tied with the maximum compensation or death benefits payable in certain cases. These interrelationships are detailed in the Section-by-Section Explanation below.

Subpart H includes proposed regulations implementing the Act's maximum and minimum provisions. The Department has organized these sections first to cover general topics, then by whether the rules govern maximum or minimum compensation payable, and finally by categories of compensation payable (*i.e.*, temporary total or partial, permanent total or partial, and death benefits).

B. Section-by-Section Explanation

This discussion contains an explanation of each proposed rule. Many of the rules include examples that use the Department's yearly calculation of the applicable national average weekly wage, the maximum and minimum weekly compensation rates, and percentage adjustments available under section 10(f), 33 U.S.C. 910(f). This information is routinely available on OWCP's Web site. *See https://www.dol.gov/owcp/dlhwc/* (last visited Aug. 1, 2016). For the reader's convenience, these amounts for FY 2000 to FY 2016 are provided in the following chart.

Period	NAWW [1]	Maximum weekly rate (200% of NAWW)	Minimum weekly rate (50% of NAWW)	Section 10(f) percent increase (%)
(FY 16) 10/01/2015–09/30/2016	$703.00	$1,406.00	$351.50	2.10
(FY 15) 10/01/2014–09/30/2015	688.51	1,377.02	344.26	2.25
(FY 14) 10/01/2013–09/30/2014	673.34	1,346.68	336.67	1.62
(FY 13) 10/01/2012–09/30/2013	662.59	1,325.18	331.30	2.31
(FY 12) 10/01/2011–09/30/2012	647.60	1,295.20	323.80	3.05
(FY 11) 10/01/2010–09/30/2011	628.42	1,256.84	314.21	2.63
(FY 10) 10/01/2009–09/30/2010	612.33	1,224.66	306.17	2.00
(FY 09) 10/01/2008–09/30/2009	600.31	1,200.62	300.16	3.47
(FY 08) 10/01/2007–09/30/2008	580.18	1,160.36	290.09	4.12
(FY 07) 10/01/2006–09/30/2007	557.22	1114.44	278.61	3.80
(FY 06) 10/01/2005–09/30/2006	536.82	1073.64	268.41	2.53
(FY 05) 10/01/2004–09/30/2005	523.58	1,047.16	261.79	1.59
(FY 04) 10/01/2003–09/30/2004	515.39	1,030.78	257.70	3.44
(FY 03) 10/01/2002–09/30/2003	498.27	996.54	249.14	3.15
(FY 02) 10/01/2001–09/30/2002	483.04	966.08	241.52	3.45
(FY 01) 10/01/2000–09/30/2001	466.91	933.82	233.46	3.61
(FY 00) 10/01/1999–09/30/2000	450.64	901.28	225.32	3.39

Some examples also include compensation calculations. When compensation is based on 66 and ⅔ percent of the injured employee's average weekly wage (*e.g.*, compensation for permanent total disability), the formula for calculating this percentage is expressed as: Average weekly wage amount × 2 ÷ 3.

Subpart G—Section 10(f) Adjustments

20 CFR 702.701 What is an annual section 10(f) adjustment and how is it calculated?

Section 10(f) of the Act, 33 U.S.C. 910(f), provides for an annual upward percentage adjustment of permanent total disability compensation rates and death benefits so that the value of the compensation received does not erode over time. Proposed § 702.701 sets out the basic rules for section 10(f) adjustments.

Proposed paragraphs (a) and (b) describe the section 10(f) adjustment and how the fiscal year percentage is determined. Consistent with the statute, paragraph (a) states that section 10(f) adjustments apply each fiscal year to permanent total disability compensation and death benefits, and that those adjustments may only increase amounts payable. 33 U.S.C. 910(f) ("benefits payable for permanent total disability or death . . . shall be increased"); 33 U.S.C. 910(g) ("in no event shall compensation for death benefits be reduced"). Paragraph (b) describes how the Department calculates the annual section 10(f) adjustment, a method dictated by section 10(f) itself. In any given fiscal year, the 10(f) adjustment is the percentage increase in the applicable national average weekly wage over the prior fiscal year's applicable national average or five percent, whichever is lower. *See* 33 U.S.C. 910(f)(1), (2).

Proposed paragraphs (c) through (e) set out how the fiscal year percentage is applied in individual cases. Paragraph (c) specifies that section 10(f) adjustments are applied each October 1 to the prior year's compensation or death benefits payable to the claimant. By using the statutory term "payable," the Department intends the percentage increase to apply to the compensation and death benefits due during the prior year, even if not actually paid. Paragraph (d) implements the statutory requirements that calculations resulting from section 10(f) adjustments are rounded to the nearest dollar and that no adjustment is made if the amount is less than one dollar. *See* 33 U.S.C. 910(g). And paragraph (e) provides that section 10(f) adjustments may not increase compensation or death benefits beyond the maximum rate for any fiscal year. This limitation is consistent with LHWCA section 6(b)(1)'s command that compensation payments, whether for disability or death, must not exceed the applicable fiscal year's maximum rate.

Finally, proposed paragraph (f) states that the adjustments do not apply to compensation for temporary or partial disability, including temporary total disability, temporary partial disability, and permanent partial disability. The paragraph reflects the limitation set forth in paragraph (a) and is added for clarity.

Subpart H—Maximum and Minimum Compensation Rates

General

20 CFR 702.801 Scope and Intent of This Subpart

Proposed § 702.801 describes the statutory provisions this subpart is intended to implement. Paragraph (a) generally lists the statutory provisions that affect the maximum and minimum compensation and death benefits payable to entitled individuals. Section 6(b) of the LHWCA, 33 U.S.C. 906(b), sets the maximum compensation rate for death or disability compensation at 200 percent of the applicable national average weekly wage, and the minimum compensation rate for total disability at the lower of the employee's average weekly wage or 50 percent of the applicable national average weekly wage. Section 6(b) also provides that the

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[1] For purposes of this chart, "NAWW" means the applicable national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls during the first three quarters of the preceding fiscal year as determined by the Department.

Secretary of Labor determines the applicable national average weekly wage for each one-year period from October 1 to September 30. Section 6(c), 33 U.S.C. 906(c), provides that the Secretary's determination of the national average weekly wage for each one-year period "shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period, as well as those newly awarded compensation during such period." Section 9(e), 33 U.S.C. 909(e), includes provisions that affect the minimum death benefits payable to a deceased employee's survivors.

Because the interpretation of section 6(c) is important to determining how the maximum and minimum provisions apply and has been the subject of litigation, proposed paragraph (b) more specifically addresses section 6(c)'s "newly awarded compensation" and "currently receiving compensation" phrases. Paragraph (b)(1) adopts the Supreme Court's conclusion in *Roberts* that a claimant, regardless of the nature or extent of disability, is "newly awarded compensation" when he or she first becomes disabled and entitled to compensation. *See supra* Section I. B. Claimants are initially subject to the maximum and minimum rates derived from the national average weekly wage in effect during the fiscal year his or her disability begins. Paragraph (b)(2) applies the Supreme Court's *Roberts* analysis to death benefits by providing that a deceased employee's survivor is "newly awarded compensation" on the day of the employee's death, the first time a survivor may be entitled to death benefits. *See* discussion *infra* at proposed § 702.807. And paragraph (b)(3) provides that a claimant is "currently receiving compensation" during the period for which the compensation is payable, regardless of when it is actually paid. This construction is consistent with the Ninth and Eleventh Circuits' interpretations. *See supra* Section I. C. While these phrases are not used in the remainder of the proposed subpart, the concepts set forth in paragraph (b) underlie the rules.

20 CFR 702.802 Applicability of This Subpart

Proposed § 702.802(a) lists several circumstances in which this subpart's rules do not apply, including: Approved settlements made under section 8(i) of the Act, 33 U.S.C. 908(i); payments for an employee's compensable death made to the Special Fund when the employee has no eligible survivors, 33 U.S.C. 944(c)(1); payments for medical expenses, 33 U.S.C. 907; and any other compensation calculated and paid in a lump sum, such as the two years of death benefits payable to an employee's eligible surviving spouse who remarries, 33 U.S.C. 909(b), or when compensation payments are commuted, 33 U.S.C. 909(g). In all of these circumstances, the maximum and minimum weekly rates do not apply either because the compensation due is not based on a weekly rate (*e.g.,* medical expenses) or it is not necessarily paid on a weekly basis (*e.g.,* settlements, commutations). Although not subject to the rules in this subpart, the maximum and minimum compensation rates will nevertheless be relevant in some of these circumstances. For example, the Department would consider such compensation rates in calculating a commuted award or death benefits payable when a survivor remarries. Similarly, the Department anticipates that private parties will consider the maximum and minimum compensation rates in settlement negotiations, and the Department will consider them in deciding whether to approve settlements.

Proposed § 702.802(b) provides that the rules governing minimum compensation and death benefits payable do not apply to claims arising under the Defense Base Act (DBA), 42 U.S.C. 1651 *et seq.* The DBA specifically precludes application of the LHWCA's minimum compensation provisions: "The minimum limit on weekly compensation for disability, established by section 6(b), and the minimum limit on the average weekly wages on which death benefits are to be computed, established by section 9(e) of the [Longshore] Act, shall not apply in computing compensation and death benefits under [the DBA]." 42 U.S.C. 1652(a). The Secretary's regulations implementing the DBA also reflect this limitation. *See* 20 CFR 704.103. The limitation in proposed § 702.802(b) comports with these authorities.

20 CFR 702.803 Definitions

This section defines certain terms used in this subpart; these definitions do not apply outside of this subpart. Proposed paragraph (a) defines a claimant's "calculated compensation rate" as the weekly compensation or death benefits payable prior to any consideration of the maximum or minimum rates, or a section 10(f) adjustment. As discussed above (*see supra* Section I. A.), this figure is a specified percentage of the employee's average weekly wage at the time of the injury or death. But there are exceptions. For example, in certain claims, the calculated compensation rate is based on the national average weekly wage rather than on the employee's actual earnings. 33 U.S.C. 909(e), 910(d)(2)(B).

Proposed paragraph (b) defines the phrase "date of disability" as the date an employee first becomes economically impaired—or, in other words, unable to earn the same wages—as a result of a covered injury. The phrase incorporates the statutory definition of "disability," *see* 33 U.S.C. 902(10), and is based on the Supreme Court's decision in *Roberts,* which held that the maximum compensation rate applicable on the day the employee became "entitled to compensation because of disability" controlled. *Roberts,* 132 S.Ct. at 1357. The phrase is used in this subpart to delineate when certain minimum or maximum compensation rates apply.

The proposed rule, however, excepts from the general "date of disability" definition three situations that demand special treatment. Paragraph (b)(2)(i) provides that for scheduled permanent partial disabilities under 33 U.S.C. 908(c)(1)–(20) that are not preceded by another category of disability (*i.e.,* permanent total, temporary total, or temporary partial), the date of disability is when the employee first becomes permanently impaired by the injury to the scheduled member. This exception is necessary because an employee may suffer a scheduled injury without any loss in wage-earning capacity, which is the touchstone for the general "date of disability" definition. Paragraph (b)(2)(ii) establishes a separate date of disability for occupational diseases because the disease may manifest after voluntary retirement, when the employee does not experience a loss of wage-earning capacity. Paragraph (b)(2)(iii) provides that for very short-term disabilities lasting no more than 14 days, the date of disability is 4 days after the injury affected the employee's wage earning capacity. For such a short-term disability, section 6(a) of the Act provides that no compensation is payable for the first 3 days of disability. 33 U.S.C. 906(a). Thus, using the fourth day as the "date of disability" for determining the maximum and minimum compensation payable reflects the date on which the employee is actually entitled to compensation.

The remaining definitions explain how basic terms are used in the proposed rule. Paragraph (c) defines the dates of a standard fiscal year. Paragraphs (d) and (e) define "maximum rate" and "minimum rate" as the weekly compensation rates the Department calculates for each fiscal year. And paragraph (f) defines a "section 10(f) adjustment" as the annual compensation increase some claimants receive under LHWCA section 10(f), 33 U.S.C. 910(f). *See* proposed § 702.701.

20 CFR 702.804 What are the weekly maximum and minimum rates for each fiscal year and how are they calculated?

Proposed § 702.804 explains how the Department calculates basic weekly maximum and minimum rates for each fiscal year. Paragraph (a) notes that these weekly compensation rates are one factor considered when calculating compensation and death benefits payable. Paragraphs (b) and (c) set forth the calculation formulas for weekly maximum and minimum rates. Both are based on the national average weekly wage, which the Act defines as the "national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls." 33 U.S.C. 902(19). These statistics are compiled on an ongoing basis by the Department's Bureau of Labor Statistics. Before each new fiscal year, the Department calculates the average earnings of these employees for the period October 1 through June 30 (*i.e.*, the first three quarters) of the current fiscal year. 33 U.S.C. 906(b)(3). The Act pegs the maximum weekly rate at 200 percent of this number and the minimum at 50 percent. 33 U.S.C. 906(b)(1), (2). For example, the national average weekly earnings of production or nonsupervisory workers on private, nonagricultural payrolls for the period from October 1, 2013, to June 30, 2014 (*i.e.*, the first three quarters of FY 2014), were $688.51. As a result, the Department determined that the maximum compensation rate for FY 2015 was $1,377.02 ($688.51 × 2) and the minimum compensation rate was $344.26 ($688.51 × 2).

Maximum Rates

20 CFR 702.805 What weekly maximum rates apply to compensation for permanent partial disability, temporary total disability, and temporary partial disability?

Proposed § 702.805 provides that the maximum rate in effect for the fiscal year on the employee's date of disability applies to all compensation payable for temporary partial disability, temporary total disability, or permanent partial disability, including compensation payable in subsequent fiscal years. This rule effectuates the Supreme Court's construction of the "newly awarded compensation" clause by applying the maximum rate for the fiscal year the employee's disability begins. For these types of compensation, the date-of-disability fiscal year's maximum rate applies to all compensation payments—including compensation payable for subsequent fiscal years—because section 6(c)'s "currently receiving compensation" clause does not apply. 33 U.S.C. 906(c) (maximum rate determinations "with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period[.]").

The first example at paragraph (b)(1) sets out a common scenario involving an injured employee who is temporarily totally disabled for a period prior to being permanently partially disabled. Although his compensation periods span more than one fiscal year, the maximum rate that applies remains the rate in effect on his date of disability. *See* proposed § 702.803(b)(1). The second example at paragraph (b)(2) is slightly more complicated. The employee incurs two separate periods of temporary total disability from the same injury; each period begins in a different fiscal year. Under section 6(c), the maximum rate applicable at the beginning of the first disability period applies to all payments for temporary total disability, including those in the second period. The third example at paragraph (b)(3) addresses an occupational disease discovered post-retirement. Occupational diseases occurring after an employee has voluntarily retired are considered permanent partial disabilities. 20 CFR 702.601(b). Thus, compensation payable in this instance is subject to the maximum rate in effect on the date of disability—when the employee becomes aware of the relationship between employment, the disease and any disability. *See* proposed § 702.803(b)(2)(ii).

20 CFR 702.806 What weekly maximum rates apply to compensation for permanent total disability?

Proposed § 702.806 implements both the "newly awarded" and "currently receiving" compensation clauses for permanent total disability compensation as they pertain to the maximum compensation payable. Paragraph (a) provides that the maximum rate for the fiscal year during which the employee first becomes permanently and totally disabled applies to all compensation payable during that fiscal year. Paragraph (b) then provides that all periods of permanent total disability in subsequent fiscal years arising from the same injury are subject to the maximum rates for those subsequent fiscal years because the employee is then "currently receiving compensation."

Proposed paragraph (c) addresses how the 10(f) adjustment applies in a "cross-over" year. A cross-over year is one in which the claimant's compensation was paid at the maximum rate in the current fiscal year, but the claimant's calculated compensation rate does not exceed the maximum rate set for the next fiscal year. In those circumstances, the rule requires that the claimant's compensation for the next fiscal year be increased by the amount of the 10(f) adjustment up to the maximum for that fiscal year.

The examples in proposed paragraph (d) apply these principles. Paragraph (d)(1) presents the relatively straightforward situation of an employee who is permanently totally disabled from the time of injury. He is "newly awarded" compensation in the fiscal year he became disabled and his compensation is subject to that fiscal year's maximum rate. In subsequent years, he is "currently receiving" compensation and his compensation is subject to the maximum rate for each subsequent fiscal year. Paragraph (d)(2) adds an additional wrinkle to the first example. Here, the employee suffers a period of temporary total disability that spans more than one fiscal year before he becomes permanently totally disabled. The maximum that applies to the entire temporary total disability compensation period is the fiscal year rate in effect on the date of disability (in the example, FY 2000), which is when the employee is "newly awarded" compensation. *See* proposed § 702.805(a). When the employee becomes permanently totally disabled two years later, however, he is "currently receiving" permanent total disability compensation and the maximum rate in effect at that time (in the example, FY 2002) applies. Compensation for permanent total disability in succeeding years is subject to those subsequent fiscal years' maximum rates because he continues to be "currently receiving" compensation.

Finally, proposed paragraph (d)(3) demonstrates how the rule operates in a "cross-over" year. In the example, employee C's calculated compensation rate exceeds the annual fiscal year maximum rate each year from when he was first permanently totally disabled in FY 2009 through FY 2012. In FY 2013, however, the employee's calculated compensation rate falls below the maximum rate and remains below that rate even after the addition of a section 10(f) adjustment. Thus, for FY 2013, employee C's compensation is not limited by the maximum rate.

20 CFR 702.807 What weekly maximum rates apply to death benefits?

Determining the maximum rates for death benefits in any particular case can be straightforward or involve several statutory provisions. The proposed rule integrates these provisions to provide a comprehensive approach to the issue.

LHWCA section 6(b)(1) applies the "applicable" maximum rate to all compensation for disability or death. For death benefits purposes, proposed § 702.807(a) defines the "applicable" rate as the fiscal-year rate in effect when the employee died. By using the employee's date of death, the rule applies the "newly awarded" clause in the same manner as the Supreme Court applied it to disability claims in *Roberts:* A survivor's right to benefits first arises at the time of death. *See generally Ingalls Shipbuilding, Inc.* v. *Director, OWCP,* 519 U.S. 248, 257–58 (1997) (survivors seeking death benefits cannot satisfy prerequisites prior to employee's death); *Travelers Insurance Co.* v. *Marshall,* 634 F.2d 843, 846 (5th Cir. 1981) (section 9 "cause of action for death benefits certainly does not arise until [employee's] death").

Proposed § 702.807(b) sets out the general rules for determining the death-benefits cap in the year the employee died. These limits are compelled by LHWCA section 6(b)(1) along with the provisions of section 9(e), 33 U.S.C. 909(e). Section 9(e) provides an alternative method for computing death benefits for survivors of lower-wage employees to boost the benefit amount. If the deceased employee's actual average weekly wage was lower than the national average weekly wage, death benefits are calculated as a percentage of the national average weekly wage instead of a percentage of the actual wage. This results in a higher calculated compensation rate than if the calculation were based on the employee's actual wage. Survivors are entitled to benefits at the higher calculated rate except when that rate exceeds the employee's full actual weekly wage. In that event, section 9(e)(1) sets an initial cap by providing that total weekly death benefits "shall not exceed the lesser of the average weekly wages of the deceased" (or the section 6(b)(1) maximum rate). 33 U.S.C. 909(e)(1). Thus, in no event may weekly death benefits payable in the year of the employee's death exceed the employee's actual average weekly wages. Proposed paragraph (b) implements these provisions by limiting "aggregate" weekly death benefits—meaning the death benefits payable to all survivors combined—to the lower of the maximum rate applicable for the fiscal year in which the employee died or the employee's actual average weekly wages.

Proposed paragraph (c) sets out rules governing payments for subsequent fiscal years. Consistent with the "currently receiving" clause, paragraph (c)(1) provides that each subsequent fiscal year's maximum rate applies to aggregate death benefits. Paragraph (c)(2) provides an exception to the section 9(e)(1) feature limiting death benefits to no more than the employee's actual average weekly wages. If death benefits were paid at the employee's full average weekly wage in the year of death, paragraph (c)(2) provides that death benefits payable may be adjusted upward under section 10(f). *See Donovan,* 31 BRBS 2 (holding that section 9(e)(1) does not bar application of 10(f) adjustments even if adjusted death benefits amount exceeds deceased employee's actual average weekly wage).

Finally, proposed paragraph (d) addresses LHWCA section 9(e)'s specific limit on death benefits payable when death results from an occupational disease that manifested after the employee retired voluntarily (*i.e.,* he or she did not retire because of disability). In those circumstances, LHWCA section 9(e)(2) provides that "total weekly benefits shall not exceed one fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement." 33 U.S.C. 909(e)(2). Proposed paragraph (d)(1) implements this provision, as well as the general section 6(b) maximum cap, by providing that aggregate death benefits paid during the year of the employee's death must not exceed the lower of that fiscal year's maximum rate *or* one-fifty-second part of the employee's average annual earnings during the 52-weeks preceding retirement. Proposed paragraph (d)(2)(i) provides that each subsequent fiscal year's maximum rate applies to aggregate death benefits because death benefits are subject to the "currently receiving" clause. If death benefits in the year of death were paid at one-fifty-second part of the employee's average annual earnings, proposed paragraph (d)(2)(ii) provides that the death benefits payable may be adjusted upward under section 10(f).

The example at proposed paragraph (e)(1) illustrates that the maximum rate applicable at the time of the employee's death applies to death benefits, even when the employee's injury occurred in an earlier fiscal year. Employee A's injury occurred in FY 2013 but he did not die as a result of the injury until FY 2014. His survivor's death benefits for the remainder of the year in which he died are subject to the FY 2014 maximum rate, with subsequent death benefits subject to each subsequent fiscal year's rate.

Paragraph (e)(2)'s example demonstrates how the death-benefits-calculation method for survivors of low-wage earners interfaces with the cap placed on those benefits in some circumstances. In the example, employee B's weekly earnings fell below the national average during the year of her death. Thus, her survivor's death benefits are computed using the higher national average weekly wage. 33 U.S.C. 909(e); *see* proposed § 702.811(a). Because that calculated compensation rate of $331.30 exceeds the employee's actual average weekly wage of $300.00, death benefits are capped at the employee's actual wages, except for section 10(f) adjustments in subsequent fiscal years.

Paragraph (e)(3) sets out an example involving an occupational disease discovered more than one year post-retirement that leads to death. Employee C's compensation during his lifetime is calculated based on the FY 2002 national average weekly wage because his disease manifested then and he had voluntarily retired more than one year earlier. Based on the date of employee C's death, his survivors' death benefits are calculated based on the national average weekly wage for FY 2015. 33 U.S.C. 910(d)(2)(B); 20 CFR 702.604(b). This calculation yields a weekly figure greater than 1/52 part of the employee's last year of earnings. Thus, the total death benefits payable are capped at 1/52 part of the employee's actual earnings, except for section 10(f) adjustments in subsequent fiscal years.

Minimum Rates

20 CFR 702.808 What weekly minimum rates apply to compensation for partial disability?

The LHWCA places no minimum compensation requirements on payments for temporary partial disability or permanent partial disability. Accordingly, proposed § 702.808 simply states that there is no minimum rate for these types of compensation.

20 CFR 702.809 What weekly minimum rates apply to compensation for temporary total disability?

Proposed § 702.809 provides that the minimum rate in effect for the fiscal year on the employee's date of disability applies to all compensation payable for temporary total disability, including compensation payable in subsequent fiscal years. LHWCA section 6(b)(2) generally provides that compensation for total disability cannot fall below 50 percent of the "applicable" national average weekly wage unless the employee's actual average weekly wages are less than that amount. In that event, the employee receives his or her average weekly wages as compensation. This rule effectuates the Supreme Court's construction of the "newly awarded compensation" clause by applying the minimum rate for the fiscal year the employee's disability begins. *See generally Montoya* v. *Navy Exchange Service Command,* 49 BRBS 51 (2015) (applying *Roberts,* employee entitled to minimum rate in effect on date of disability onset). The date-of-disability fiscal year's minimum rate applies to all temporary total disability compensation payments—including compensation payable for subsequent fiscal years—because section 6(c)'s "currently receiving" clause does not apply to compensation for temporary disabilities. *See* 33 U.S.C. 906(c) (national average weekly wage determinations "with respect to a period shall apply to employees or survivors currently receiving compensation for permanent total disability or death benefits during such period"). Thus, the applicable minimum remains the one in effect on the date of disability.

Proposed paragraph (b)'s example demonstrates how the minimum rate provision works when the employee's calculated compensation rate falls below it. In the example, employee A's calculated compensation rate for FY 2014 (the year of his injury) is $333.34 per week. That number falls below the FY 2014 minimum rate of $336.67. Thus, employee A's compensation is raised to the minimum rate. Although his temporary total disability continues into FY 2015, his rate remains tied to the FY 2014 minimum because neither section 6(c)'s "currently receiving" clause nor section 10(f)'s adjustments apply to compensation for temporary disabilities. *See* 33 U.S.C. 906(c), 910(f).

20 CFR 702.810 What weekly minimum rates apply to compensation for permanent total disability?

Proposed § 702.810(a) provides that the lower of the minimum rate in effect on the date of disability *or* the employee's actual average weekly wage on that date sets the floor below which compensation may not fall. This rule implements LHWCA section 6(b)(2)'s direction that compensation for total disability be no less than 50 percent of the "applicable" national average weekly wage unless the employee's actual average weekly wages are less than that amount. In that event, the employee receives his or her average weekly wages as compensation. By using the date of disability to describe the applicable fiscal year's minimum rate, paragraph (a) also implements section 6(c)'s "newly awarded" clause.

Proposed paragraph (b) describes how the minimum applies in subsequent fiscal years. It sets the minimum compensation level at the lower of the minimum rate for each subsequent fiscal year or the employee's actual average weekly wages on the date of disability. By applying subsequent fiscal years' minimum rates, the regulation implements section 6(c)'s "currently receiving" clause.

Proposed paragraph (c)'s example shows how this regulation applies when a low-wage earner suffers a permanent total disability. Because his calculated compensation rate for the fiscal year in which he first became disabled (in the example, FY 2003) was below the applicable fiscal year minimum rate, and his actual weekly wages were above the fiscal year minimum, he is compensated at the minimum rate. But in subsequent fiscal years, when the minimum rises above the employee's actual average weekly wages at the time of disability, he receives his actual wages in compensation, subject in following years to section 10(f) adjustments.

20 CFR 702.811 What weekly minimum rates apply to death benefits?

Rather than applying weekly minimum rates like those used for temporary total or permanent total disability compensation—specified amounts below which compensation may not fall—section 9(e) of the Act, 33 U.S.C. 909(e), uses a different mechanism to ensure a minimum compensation level for an employee's survivors. Section 9(e) does this by using the national average weekly wage calculated by the Department under section 6(b) as a proxy to compute death benefits when the deceased employee's actual weekly wage falls below the national average. *See* 33 U.S.C. 902(19) (defining national average weekly wage for LHWCA purposes). Using the national average weekly wage ensures that death benefits will be paid at a minimal level. Proposed paragraph (a) sets out this procedure by providing that the average weekly wage used to compute death benefits is the greater of the employee's actual wages or the national average. The regulation also provides that the applicable national average weekly wage is the one in effect when the employee died, which is when a survivor's right to benefits first arises. *See generally Ingalls Shipbuilding,* 519 U.S. at 257–58 (survivors seeking death benefits cannot satisfy prerequisites prior to employee's death); *Travelers Insurance,* 634 F.2d at 846 (section 9 "cause of action for death benefits certainly does not arise until [employee's] death"). Paragraph (b) adds that the weekly minimum rate, as that phrase is used in this subpart, does not apply to death benefits.

III. Statutory Authority

Section 39(a) of the LHWCA, 33 U.S.C. 939(a), authorizes the Secretary of Labor to prescribe rules and regulations necessary for the administration of the Act.

IV. Information Collection Requirements (Subject to the Paperwork Reduction Act) Imposed Under the Proposed Rule

This rulemaking would impose no new collections of information.

V. Executive Orders 12866 and 13563 (Regulatory Planning and Review)

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Department has considered this proposed rule with these principles in mind and has concluded that the regulated community will benefit from this regulation.

This proposed rule will benefit the parties by providing them with greater guidance on applying the Act's maximum and minimum compensation provisions and section 10(f) adjustments in determining the amount of disability compensation or death benefits payable. By clarifying how these provisions apply, the rule will also promote consistency so that similarly situated claimants receive similar compensation or death benefits. In addition, the rule will benefit the regulated community by forestalling further litigation over the "currently receiving" clause, which neither the Supreme Court nor several circuit courts have yet construed. Indeed, the absence of regulations implementing these statutory provisions led to much of the litigation described above. *See supra* Sections I. B. and C.

The Department also sees no countervailing burden—economic or otherwise—other than those imposed by the statute itself that would counsel against promulgating this rule.

Finally, because this is not a "significant regulatory action" within the meaning of Executive Order 12866, the Office of Management and Budget has not reviewed it prior to publication.

VI. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector, "other than to the extent that such regulations incorporate requirements specifically set forth in law." For purposes of the Unfunded Mandates Reform Act, this rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100,000,000.

VII. Regulatory Flexibility Act and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*), requires an agency to prepare a regulatory flexibility analysis when it proposes regulations that will have "a significant economic impact on a substantial number of small entities" or to certify that the proposed regulations will have no such impact, and to make the analysis or certification available for public comment.

The Department has determined that a regulatory flexibility analysis under the RFA is not required for this rulemaking. While many longshore employers are small entities within the meaning of the RFA, *see generally* 77 FR 19471–72 (March 30, 2012), this rule, if adopted in final, will not have a significant economic impact on them. The proposed rules reflect current payment practices and thus impose no new costs on employers or their insurance carriers. As explained above, the proposed rules mainly codify case law interpreting how the Act's maximum and minimum provisions work; the rules are based primarily on the Supreme Court's controlling decision in *Roberts,* the Ninth and Eleventh Circuits' decisions in *Roberts* and *Boroski,* and the Benefits Review Board's decisions in *Reposky* and *Lake.*

With one small exception, these decisions comport with the Director's longstanding interpretation and application of the maximum and minimum compensation provisions. That exception involved cases in which the employee's disability was initially something less than permanent total—temporary total, permanent partial, or temporary partial—and in a later fiscal year became permanently totally disabling. Prior to the Ninth Circuit's decision in *Roberts,* the Department took the view that the employee would have remained at the maximum rate in effect on the date of disability until the next October 1. On that October 1, his compensation rate would be determined by applying section 10(f) to increase his maximum rate by the same percentage as the increase to the national average weekly wage. But the Ninth Circuit held that the employee need not wait until the next October 1 and is instead immediately subject to the maximum rate in effect on the day he or she becomes permanently totally disabled under section 6(c)'s "currently receiving" clause. *Roberts,* 625 F.3d at 1208–09. The Department has been following the Ninth Circuit's construction of the statute since 2012, and the regulations reflect this construction as well.

Based on these facts, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required. The Department invites comments from members of the public who believe the regulations will have a significant economic impact on a substantial number of small longshore employers or insurers. The Department has provided the Chief Counsel for Advocacy of the Small Business Administration with a copy of this certification. *See* 5 U.S.C. 605.

XIII. Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The proposed rule will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government," if promulgated as a final rule.

IX. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

List of Subjects in 20 CFR Part 702

Administrative practice and procedure, Claims, Longshore and harbor workers, Maximum compensation rates, Minimum compensation rates, Workers' compensation.

For the reasons set forth in the preamble, the Department of Labor proposes to amend 20 CFR part 702 as follows:

PART 702—ADMINISTRATION AND PROCEDURE

■ 1. The authority citation for part 702 is revised to read as follows:

Authority: 5 U.S.C. 301, and 8171 *et seq.;* 33 U.S.C. 901 *et seq.;* 42 U.S.C. 1651 *et seq.;* 43 U.S.C. 1333; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 10–2009, 74 FR 58834.

■ 2. In part 702, add subparts G and H as follows:

Subpart G—Section 10(f) Adjustments

Sec.

702.701 What is an annual section 10(f) adjustment and how is it calculated?

Subpart H—Maximum and Minimum Compensation Rates

General

Sec.

702.801 Scope and intent of this subpart.
702.802 Applicability of this subpart.
702.803 Definitions.
702.804 What are the weekly maximum and minimum rates for each fiscal year and how are they calculated?

Maximum Rates

Sec.

702.805 What weekly maximum rates apply to compensation for permanent partial disability, temporary total disability, and temporary partial disability?
702.806 What weekly maximum rates apply to compensation for permanent total disability?
702.807 What weekly maximum rates apply to death benefits?

Minimum Rates

Sec.

702.808 What weekly minimum rates apply to compensation for partial disability?
702.809 What weekly minimum rates apply to compensation for temporary total disability?
702.810 What weekly minimum rates apply to compensation for permanent total disability?
702.811 What weekly minimum rates apply to death benefits?

Subpart G—Section 10(f) Adjustments

§ 702.701 What is an annual section 10(f) adjustment and how is it calculated?

(a) Claimants receiving compensation for permanent total disability or death benefits are entitled to section 10(f) adjustments each fiscal year. A section 10(f) adjustment cannot decrease the compensation or death benefits payable to any claimant.

(b) The section 10(f) adjustment for a given fiscal year is the lower of:

(1) The percentage by which the new fiscal year's national average weekly wage exceeds the prior fiscal year's national average weekly wage as determined by the Department (*see* § 702.804(b)); or

(2) 5 percent.

(c) Section 10(f) percentage increases are applied each October 1 to the amount of compensation or death benefits payable in the prior fiscal year.

(d) In applying section 10(f) adjustments—

(1) Calculations are rounded to the nearest dollar; and

(2) No adjustment is made if the calculated amount is less than one dollar.

(e) A section 10(f) adjustment must not increase a claimant's weekly compensation or death benefits beyond the applicable fiscal year's maximum rate.

(f) Section 10(f) adjustments do not apply to compensation for temporary or partial disability.

Subpart H—Maximum and Minimum Compensation Rates

General

§ 702.801 Scope and intent of this subpart.

(a) This subpart implements the Act's provisions that affect the maximum and minimum rates of compensation and death benefits payable to employees and survivors. These statutory provisions include sections 6(b) and (c), and 9(e). 33 U.S.C. 906(b), (c); 909(e). It is intended that these statutory provisions be construed as provided in this subpart.

(b) These regulations implement section 6(c), 33 U.S.C. 906(c), based on the following concepts:

(1) An employee is "newly awarded compensation" when he or she first becomes disabled due to an injury;

(2) A survivor is "newly awarded compensation" on the date the employee died; and

(3) An employee or survivor is "currently receiving compensation" when compensation for permanent total disability or death benefits is payable, regardless of when payment is actually made.

§ 702.802 Applicability of this subpart.

(a) This subpart applies to all compensation and death benefits paid under the Act with the following exceptions:

(1) Amounts payable under an approved settlement (*see* 33 U.S.C. 908(i));

(2) Amounts paid for an employee's death to the Special Fund (*see* 33 U.S.C. 944(c)(1));

(3) Any payments for medical expenses (*see* 33 U.S.C. 907); and

(4) Any other lump sum payment of compensation or death benefits, including aggregate death benefits paid when a survivor remarries (*see* 33 U.S.C. 909(b)) or aggregate compensation paid under a commutation (*see* 33 U.S.C. 909(g)).

(b) The rules in this subpart governing minimum disability compensation and death benefits do not apply to claims arising under the Defense Base Act, 42 U.S.C. 1651 (*see* 42 U.S.C. 1652(a); 20 CFR 704.103).

§ 702.803 Definitions.

The following definitions apply to this subpart:

(a) Calculated compensation rate means the amount of weekly compensation for total disability or death that a claimant would be entitled to if there were no maximum rates, minimum rates, or section 10(f) adjustments.

(b) Date of disability

(1) Except as provided in paragraph (b)(2), the date of disability is the date on which the employee first became incapable, because of an injury, of earning the same wages the employee was receiving at the time of the injury.

(2) Exceptions:

(i) For scheduled permanent partial disability benefits under 33 U.S.C. 908(c)(1)–(20) that are not preceded by a permanent total, temporary total, or temporary partial disability resulting from the same injury, the date of disability is the date on which the employee first becomes permanently impaired by the injury to the scheduled member.

(ii) For an occupational disease that does not immediately result in disability, the date of disability is the date on which the employee becomes aware, or in the exercise of reasonable diligence or by reason of medical advice should have been aware, of the relationship between his or her employment, the disease, and the disability.

(iii) For any disability lasting 14 or fewer days, the date of disability is 4 days after the date on which the employee first became incapable, because of an injury, of earning the same wages the employee was receiving at the time of the injury.

(c) Fiscal year or FY means the period from October 1 of a calendar year until September 30 of the following calendar year.

(d) Maximum rate means the maximum weekly compensation rate calculated by the Department for a given fiscal year as described in § 702.804(b).

(e) Minimum rate means the minimum weekly compensation rate calculated by the Department for a given fiscal year as described in § 702.804(c).

(f) Section 10(f) adjustment means the annual increase that certain claimants receiving compensation for permanent total disability or death are entitled to each fiscal year under 33 U.S.C. 910(f) and as calculated by the Department as described in § 702.701(b).

§ 702.804 What are the weekly maximum and minimum rates for each fiscal year and how are they calculated?

(a) For each fiscal year, the Department must determine a weekly maximum and minimum compensation rate. These amounts are called the maximum and minimum rates in this subchapter. In combination with other factors, these rates are used to determine compensation payments under the Act.

(b) The maximum compensation rate in effect for a given fiscal year is 200% of the national average weekly earnings of production or nonsupervisory workers on private, nonagricultural payrolls, as calculated by the Department, for the first three quarters of the preceding fiscal year.

(c) The minimum compensation rate in effect for a given fiscal year is 50% of the national average weekly earnings of production or nonsupervisory workers on private, nonagricultural payrolls, as calculated by the Department, for the first three quarters of the preceding fiscal year.

Maximum Rates

§ 702.805 What weekly maximum rates apply to compensation for permanent partial disability, temporary total disability, and temporary partial disability?

(a) The maximum rate in effect on the date of disability applies to all compensation payable for permanent partial disability, temporary partial disability, and temporary total disability.

(b) Examples:

(1) Employee *A* suffers a covered workplace injury on April 1, 2000, is temporarily totally disabled from that day through June 4, 2002, and is

thereafter permanently partially disabled. All compensation payable for *A's* disability is subject to the FY 2000 maximum rate.

(2) Employee *B* suffers a covered workplace injury on August 25, 2010, and is temporarily totally disabled until September 25, 2010, when he returns to work. On January 3, 2011, he again becomes temporarily totally disabled from the same injury. He ceases work and is unable to return until November 22, 2012. All compensation payable for *B's* disability is subject to the FY 2010 maximum rate.

(3) Employee *C* retires on May 6, 2011. She discovers on November 10, 2012, that she has a compensable occupational disease. All compensation payable for *C's* occupational disease is subject to the FY 2013 maximum rate. *See* § 702.601(b) (occupational diseases discovered post-retirement are compensated as permanent partial disabilities).

§ 702.806 What weekly maximum rates apply to compensation for permanent total disability?

(a) The maximum rate in effect on the date that the employee became totally and permanently disabled applies to all compensation payable for permanent total disability during that fiscal year.

(b) For all periods the employee is permanently and totally disabled in subsequent fiscal years, the weekly compensation payable is subject to each subsequent year's maximum rate.

(c) If a claimant is receiving compensation for permanent total disability at the maximum rate for the current fiscal year, but the next fiscal year's maximum rate will be higher than the claimant's calculated compensation rate, the claimant's compensation for the next fiscal year will increase by the amount of the 10(f) adjustment, subject to the maximum rate for the next fiscal year.

(d) Examples:

(1) Employee *A* suffers a covered workplace injury on April 1, 2000, and is permanently and totally disabled from that date forward. *A's* compensation for the period from April 1, 2000, until September 30, 2000, is subject to the FY 2000 maximum rate. Beginning October 1, 2000, *A's* compensation for FY 2001 is subject to the FY 2001 maximum rate, compensation for FY 2002 is subject to the FY 2002 maximum rate, *etc.*

(2) Employee *B* suffers a covered workplace injury on April 1, 2000, is temporarily totally disabled from that day through June 3, 2002, and is thereafter permanently totally disabled. *B's* compensation for the period from April 1, 2000, through June 3, 2002, is subject to the FY 2000 maximum rate (*see* § 702.805(a)). B's compensation for the period from June 4, 2002, through September 30, 2002, is subject to the FY 2002 maximum rate. Beginning October 1, 2002, *B's* compensation for FY 2003 is subject to the FY 2003 maximum rate, compensation for FY 2004 is subject to the FY 2004 maximum rate, *etc.*

(3) Employee *C* suffers a covered workplace injury in FY 2009 and is permanently totally disabled from that day forward. He was earning $1,950.00 a week when he was injured, making his calculated compensation rate $1,300.00 ($1,950.00 × 2 ÷ 3). His calculated compensation rate exceeds the maximum rate from FY 2009–2012; thus, his compensation is limited to each year's maximum rate. In FY 2013, *C's* calculated compensation rate of $1,300.00 is, for the first time, less than the FY 2013 maximum rate of $1,325.18. Applying the FY 2013 2.31% section 10(f) adjustment to *C's* FY 2012 compensation rate of $1,295.20 results in a compensation rate of $1,325.00 ($1,295.20 × .0231 = $29.92 (rounded to the nearest cent); $1,295.20 + $29.92 = $1,325.12, rounded to the nearest dollar). This amount falls just below the FY 2013 maximum rate of $1,325.18. Thus, *C's* benefit rate for FY 2013 is $1,325.00, and is not limited by the maximum rate.

§ 702.807 What weekly maximum rates apply to death benefits?

(a) The maximum rate in effect on the date that the employee died applies to all death benefits payable during that fiscal year.

(b) Aggregate weekly death benefits paid to all eligible survivors during the fiscal year in which the employee died must not exceed the lower of—

(1) The maximum rate for that fiscal year; or

(2) The employee's average weekly wages.

(c) For subsequent fiscal years—

(1) Aggregate weekly death benefits paid during each subsequent fiscal year are subject to each subsequent year's maximum rate.

(2) If death benefits were paid in the first year at the employee's full average weekly wage under paragraph (b)(2), the aggregate weekly death benefits paid for each subsequent year may not exceed the current benefit rate plus the subsequent year's section 10(f) adjustment (*see* § 702.701).

(d) Post-retirement occupational diseases. Notwithstanding paragraphs (a)–(c), if an employee's death results from an occupational disease where the date of disability occurred after the employee voluntarily retired—

(1) Aggregate weekly death benefits paid to all eligible survivors during the fiscal year in which the employee died must not exceed the lower of:

(i) The maximum rate for that fiscal year; or

(ii) One fifty-second part of the employee's average annual earnings during the 52-week period preceding retirement.

(2) For subsequent fiscal years—

(i) Aggregate weekly death benefits paid during each subsequent fiscal year are subject to each subsequent year's maximum rate.

(ii) If death benefits were paid in the first year at 1/52 part of the employee's average annual earnings prior to retirement under paragraph (d)(1)(ii), the aggregate weekly death benefits paid for each subsequent year may not exceed the current benefit rate plus the subsequent year's section 10(f) adjustment (*see* § 702.701).

(e) Examples:

(1) Employee *A* suffers a covered workplace injury on May 1, 2013, and is permanently and totally disabled from that date until August 1, 2014, when he dies due to the injury. He has one eligible survivor and his average weekly wage at the time of injury was $3,000.00. The calculated compensation rate for *A's* survivor is $1,500.00 (*i.e.,* 50% of *A's* average weekly wage). *A's* weekly survivor's benefits for the period from August 2, 2014, to September 30, 2014, are limited to the FY 2014 maximum rate of $1,346.68. Beginning October 1, 2014, *A's* survivor's benefits for FY 2015 are subject to the FY 2015 maximum rate, benefits for FY 2016 are subject to the FY 2016 maximum rate, *etc.*

(2) Employee *B* suffers a covered workplace injury and dies on December 1, 2012. She has one eligible survivor and her average weekly wage was $300.00. Because *B's* average weekly wage of $300.00 falls below the FY 2013 national average weekly wage of $662.59, death benefits are calculated at 50% of that national average wage (*see* 33 U.S.C. 909(e)). This yields a calculated compensation rate of $331.30. But because this rate exceeds *B's* actual average weekly wages, weekly death benefits payable during FY 2013 are limited to $300.00. In FY 2014, *B's* survivor is entitled to a 1.62% section 10(f) adjustment, resulting in weekly death benefits of $305.00 ($300.00 × .0162 = $4.86; $300.00 + $4.86 = $304.86, rounded to the nearest dollar). *B's* survivor would continue to receive section 10(f) adjustments in subsequent fiscal years.

(3) Employee *C* retired on February 1, 1998. During his last year of employment, he earned $23,000. He discovers on April 15, 2002, that he has a compensable occupational disease resulting in a 50% permanent impairment. *See* § 702.601(b). Because he retired more than one year before this date, his payrate for calculating compensation is the FY 2002 national average weekly wage, or $483.04. *See* § 702.603(b). He is entitled to weekly compensation of $161.01 ($483.04 × 2 ÷ 3 × 50%). *C* dies from the disease on June 1, 2015, leaving two survivors. The payrate for calculating death benefits is the FY 2015 national average weekly wage, or $688.51. *See* § 702.604(b). The survivors' aggregate calculated compensation rate is $459.01 ($688.51 × 2 ÷ 3). But because compensation cannot exceed 1/52 part of *C's* last year of earnings, aggregate weekly death benefits payable for FY 2015 are limited to $442.31 ($23,000 ÷ 52). For FY 2016, *C's* survivors are entitled to a 2.10% section 10(f) adjustment resulting in weekly death benefits of $452.00 ($442.31 × 021 = $9.29 (rounded to the nearest cent); $442.31 + $9.29 = $451.60, rounded to the nearest dollar). *C's* survivors would continue to receive section 10(f) adjustments in subsequent fiscal years.

Minimum Rates

§ 702.808 What weekly minimum rates apply to compensation for partial disability?

There is no minimum rate for compensation paid for partial disability, whether temporary or permanent.

§ 702.809 What weekly minimum rates apply to compensation for temporary total disability?

(a) The minimum compensation payable for temporary total disability is the lower of:

(1) The minimum rate in effect on the date of disability, or

(2) The employee's average weekly wage on the date of disability.

(b) Example: Employee *A* suffers a covered workplace injury on May 6, 2014. He is temporarily totally disabled until November 6, 2015, when he returns to work. His average weekly wages at the time of disability were $500.00. Because his calculated compensation rate (*i.e.,* 66 and ⅔% of $500.00, or $333.34) is lower than the $336.67 FY 2014 minimum rate, *A's* compensation is raised to $336.67 for the entire period of his disability.

§ 702.810 What weekly minimum rates apply to compensation for permanent total disability?

(a) The weekly minimum compensation payable for the fiscal year in which the employee became permanently and totally disabled is the lower of:

(1) The minimum rate in effect on the date of disability, or

(2) The employee's average weekly wage on the date of disability.

(b) For all periods the employee is permanently and totally disabled in subsequent fiscal years, the weekly minimum compensation payable is the lower of:

(1) Each subsequent fiscal year's minimum rate, or

(2) The employee's average weekly wage on the date of disability.

(c) Example: Employee *A* suffers a covered workplace injury on April 1, 2003, and is permanently totally disabled from that day forward. He was earning $250.00 a week when he was injured. His calculated compensation rate is $166.67 ($250 × 2 ÷ 3). The FY 2003 minimum rate is $249.14. Because *A's* calculated compensation rate is below the FY 2003 minimum rate, and his actual weekly wage is above that rate, he is entitled to compensation at the minimum rate of $249.14 from April 1, 2003, to September 30, 2003. The FY 2004 minimum rate is $257.70. Because *A's* actual weekly wages on the date of disability are lower than the FY 2004 minimum rate, *A's* minimum weekly compensation rate for FY 2004 is $250.00. His weekly compensation rate for FY 2004, however, is higher because of a section 10(f) adjustment. For FY 2004, *A's* compensation rate is increased by a 3.44% section 10(f) adjustment, raising his compensation level to $258.00 ($249.14 × .0344 = $8.57; $249.14 + $8.57 = $257.71, rounded to the nearest dollar).

§ 702.811 What weekly minimum rates apply to death benefits?

(a) The average weekly wage used to compute death benefits is the greater of—

(1) The deceased employee's average weekly wages; or

(2) The national average weekly wage in effect at the time of the employee's death.

(b) The weekly minimum rate does not apply to death benefits.

Leonard J. Howie III,

Director, Office of Workers' Compensation Programs.

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DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 515

RIN 3141–AA65

Privacy Act Procedures

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this document is to propose amendments to the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Privacy Act of 1974. The proposed amendments make the following changes to the current regulations. These changes will serve to update certain Commission information, streamline how the Commission processes its Privacy Act requests, and aligns those processes with its procedures for processing Freedom of Information Act requests.

DATES: Written comments on this proposed rule must be received on or before October 11, 2016.

ADDRESSES: Comments may be mailed to Attn: National Indian Gaming Commission, FOIA/PA Officer, C/O Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240 or faxed to (202) 632–7066 (this is not a toll free number). Comments may be inspected between 9:00 a.m. and noon and between 2:00 p.m. and 5:00 p.m., Monday through Friday, at 90 K Street NE., Washington, DC 20002. Comments may also be submitted electronically at *www.regulations.gov* or emailed to *pacomments@nigc.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Mendoza at (202) 632–7003 or by fax (202) 632–7066 (these numbers are not toll free).

SUPPLEMENTARY INFORMATION:

I. Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal.

II. Background

The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission. Congress enacted the Privacy Act in 1974 (Pub. L. 93–579, 5

U.S.C. 552a). The Commission originally adopted Privacy Act procedures on January 22, 1993. Since that time, the Commission has changed the location of its headquarters office, established a new system of records, and streamlined the way it processes Privacy Act requests. These proposed amendments serve to incorporate those changes into the Commission's regulations and to better align the Commission's processing of its Privacy Act with its Freedom of Information Act requests.

Regulatory Flexibility Act: The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that would be considered impacts within the scope of the Act.

Unfunded Mandates Reform Act

The Commission is an independent regulatory agency, and, as such, is exempt from the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

Takings

In accordance with Executive Order 12630, the Commission has determined that this proposed rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than $100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

Paperwork Reduction Act

The proposed rule does not contain any information collection requirements for which the Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) would be required.

National Environmental Policy Act

The Commission has determined that the proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

List of Subjects in 25 CFR Part 515

Administrative practice and procedure, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Commission proposes to revise part 25 CFR part 515 to read as follows:

PART 515—PRIVACY ACT PROCEDURES

Sec.

515.1 Purpose and scope.
515.2 Definitions.
515.3 Request for access to records.
515.4 Responsibility for responding to requests.
515.5 Responses to requests for access to records.
515.6 Request for amendment or correction of records.
515.7 Appeals of initial agency adverse determination.
515.8 Requests for an accounting of record disclosure.
515.9 Notice of court-ordered and emergency disclosures.
515.10 Fees.
515.11 Penalties.
515.12 [Reserved]
515.13 Specific exemptions.

Authority: 5 U.S.C. 552a

§ 515.1 Purpose and scope.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Privacy Act of 1974. These regulations should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The regulations in this part apply to all records contained within systems of records maintained by the Commission that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission. The Commission shall also process all Privacy Act requests for access to records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Commission's FOIA regulations contained in 25 CFR part 517, which gives requesters maximum disclosure.

§ 515.2 Definitions.

For the purposes of this subpart:

(a) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain* means store, collect, use, or disseminate.

(c) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or identifying number, symbol, or other identifier assigned to the individual, such as social security number, finger or voice print, or photograph.

(d) *System of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifier assigned to the individual.

(e) *Routine* use means use of a record for a purpose that is compatible with the purpose for which it was collected.

(f) *Working day* means a Federal workday that does not include Saturdays, Sundays, or Federal holidays.

§ 515.3 Request for access to records.

(a) *How made and addressed.* Any individual may make a request to the Commission for access to records about him or herself. Such requests shall conform to the requirements of this section. The request may be made in person at 90 K Street NE., Suite 200, Washington, DC 20002 during the hours of 9 a.m. to 12 noon and 2 p.m. to 5 p.m. Monday through Friday, in writing at NIGC Attn: Privacy Act Office, C/O Department of the Interior, 1849 C Street NW., Mail Stop #1621, Washington, DC 20240, or via electronic mail addressed to *PARequests@nigc.gov.*

(b) *Description of records sought.* Each request for access to records must describe the records sought in enough detail to enable Commission personnel to locate the system of records containing them with a reasonable amount of effort. Whenever possible, the request should describe the records sought, the time periods in which the records were compiled, any tribal gaming facility with which they were associated, and the name or identifying number of each system of records in which the records are kept.

(c) *Agreement to pay fees.* Requests shall also include a statement indicating the maximum amount of fees the requester is willing to pay to obtain the requested information. The requester must send acknowledgment to the Privacy Act Officer indicating his/her willingness to pay the fees. Absent such an acknowledgment within the specified time frame, the request will be considered incomplete, no further work shall be done, and the request will be administratively closed.

(d) *Verification of identity.* When making a request for access to records the individual seeking access must provide verification of identity. The requester must provide a full name, current address, and date and place of birth. The request must be signed and must either be notarized or submitted under 28 U.S.C. 1746, which is a law that permits statements to be made under penalty of perjury as a substitute for notarization. In order to assist in the identification and location of requested records, a request may also, at the requester's option, include a social security number.

(e) *Verification of guardianship.* When making a request as a parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, the request must establish:

(1) The identity of the individual who is the subject of the record by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's own identity, as required in paragraph (d) of this section;

(3) That the requester is the parent or guardian of the individual and proof of such relationship by providing a birth certificate showing parentage or a court order establishing guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

(f) *Verification in the case of third party information requests.* Any individual who desires to have a record covered by this part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual whose record is requested, and notarized or witnessed as provided in paragraph (d) of this section.

(g) *In-person disclosures.* An individual to whom a record is to be disclosed in person, pursuant to this section, may have a person of his or her own choosing accompany him or her when the record is disclosed. If a requester is accompanied by another individual, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

§ 515.4 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, the Commission ordinarily will include only records in its possession as of the date it begins its search for records. If any other date is used, the Privacy Act Office shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Privacy Act Office shall make initial determinations either to grant or deny in whole or in part access to records.

(c) *Consultations and referrals.* When the Commission receives a request for a record in its possession, the Privacy Act Office shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the Privacy Act. If the Privacy Act Office determines that it is best able to process the record in response to the request, then it shall do so. If the Privacy Act Office determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency best able to determine whether to disclose it, or to another agency that originated the record. Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(d) *Notice of referral.* Whenever the Privacy Act Office refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred and of the part of the request that has been referred.

§ 515.5 Responses to requests for access to records.

(a) *Acknowledgement of requests.* Upon receipt of a request, the Privacy Act Office ordinarily shall, within 20 working days, send an acknowledgement letter which shall confirm the requester's agreement to pay fees under § 515.9 and provide an assigned request number.

(b) *Grants of requests for access.* Once the Privacy Act Office makes a determination to grant a request for access in whole or in part, it shall notify the requester in writing. The notice shall inform the requester of any fee charged under § 515.9 and the Privacy Act Office shall disclose records to the requester promptly on payment of any applicable fee. If a request is made in person, the Privacy Act Office will disclose the records to the requester directly, in a manner not unreasonably disruptive of its operations, on payment of any applicable fee and with a written record made of the grant of the request. If a requester is accompanied by another individual, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(c) *Adverse determinations of requests for access.* If the Privacy Act Office makes any adverse determination denying a request for access in any respect, it shall notify the requester of that determination in writing. The notification letter shall be signed by the official making the determination and include:

(1) The name and title of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied to the denial;

(3) A statement that the denial may be appealed under § 515.7 and a description of the requirements of § 515.7.

§ 515.6 Request for amendment or correction of records.

(a) *How made and addressed.* An individual may make a request for an amendment or correction to a Commission record about that individual by writing directly to the Privacy Act Office, following the procedures in § 515.3. The request should identify each particular record in question, state the amendment or correction that is sought, and state why the record is not accurate, relevant, timely, or complete. The request may include any documentation that would be helpful to substantiate the reasons for the amendment sought.

(b) *Privacy Act Office response.* The Privacy Act Office shall, not later than 10 working days after receipt of a request for an amendment or correction of a record, acknowledge receipt of the request and provide notification of whether the request is granted or denied. If the request is granted in whole or in part, the Privacy Act Office shall describe the amendment or correction made and shall advise the requester of the right to obtain a copy of the amended or corrected record. If the request is denied in whole or in part, the Privacy Act Office shall send a letter signed by the denying official stating:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section.

(c) *Appeals.* A requester may appeal a denial of a request for amendment or correction in the same manner as a denial of a request for access as described in § 515.7. If the appeal is denied, the requester shall be advised of the right to file a Statement of Disagreement as described in paragraph (d) of this section and of the right under the Privacy Act for judicial review of the decision.

(d) *Statements of Disagreement.* If the appeal under this section is denied in whole or in part, the requester has the right to file a Statement of Disagreement that states the reason(s) for disagreeing with the Privacy Act Office's denial of the request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The Statement of Disagreement shall be placed in the system of records in which the disputed record is maintained and the record shall be marked to indicate a Statement of Disagreement has been filed.

(e) *Notification of amendment, correction, or disagreement.* Within 30 working days of the amendment or correction of the record, the Privacy Act Office shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If a Statement of Disagreement was filed, the Commission shall append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend the record.

(f) *Records not subject to amendment.* Section 515.13 lists the records that are exempt from amendment or correction.

§ 515.7 Appeals of initial adverse agency determination.

(a) *Adverse determination.* An initial adverse agency determination of a request may consist of: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that the requested record is not a record subject to the Privacy Act; a determination that a record will not be amended; a determination to deny a request for an accounting; a determination on any disputed fee matter; and any associated denial of a request for expedited treatment under the Commission's FOIA regulations.

(b) *Appeals.* If the Privacy Act Office issues an adverse determination in response to a request, the requester may file a written notice of appeal. The notice shall be accompanied by the original request, the initial adverse determination that is being appealed, and a statement describing why the adverse determination was in error. The appeal shall be addressed to the Privacy Act Appeals Officer at the locations listed in § 515.3 no later than 30 working days after the date of the letter denying the request. Both the appeal letter and envelope should be marked "Privacy Act Appeal." Any Privacy Act appeals submitted via electronic mail should state "Privacy Act Appeal" in the subject line.

(c) *Responses to appeals.* The decision on appeal will be made in writing within 30 working days of receipt of the notice of appeal by the Privacy Act Appeals Officer. For good cause shown, however, the Privacy Act Appeals Officer may extend the 30 working day period. If such an extension is taken, the requester shall be promptly notified of such extension and the anticipated date of decision. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the determination, including any Privacy Act exemption(s) applied. If the adverse determination is reversed or modified in whole or in part, the requester will be notified in a written decision and the request will be reprocessed in accordance with that appeal decision. The response to the appeal shall also advise of the right to institute a civil action in a Federal district court for judicial review of the decision.

(d) *When appeal is required.* In order to institute a civil action in a Federal district court for judicial review of an adverse determination, a requester must first appeal it under this section.

§ 515.8 Requests for an accounting of record disclosure.

(a) *How made and addressed.* Subject to the exceptions listed in paragraph (b) of this section, an individual may make a request for an accounting of the disclosures of any record about that individual that the Commission has made to another person, organization, or agency. The accounting contains the date, nature and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. The request for an accounting should identify each particular record in question and should be made in writing to the Commission's Privacy Act Office, following the procedures in § 515.3.

(b) *Where accountings are not required.* The Commission is not required to provide an accounting where they relate to:

(1) Disclosures for which accountings are not required to be kept, such as those that are made to employees of the Commission who have a need for the record in the performance of their duties and disclosures that are made under section 552 of title 5;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from law enforcement systems of records that have been exempted from accounting requirements.

(c) *Appeals.* A requester may appeal a denial of a request for an accounting in the same manner as a denial of a request for access as described in § 515.7 and the same procedures will be followed.

(d) *Preservation of accountings.* All accountings made under this section will be retained for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

§ 515.9 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Privacy Act Office shall make reasonable efforts to provide notice of this to the individual. Notice shall be given within a reasonable time after the Privacy Act Office's receipt of the order—except that in a case in which the order is not a matter of public record, the notice shall be given only after the order becomes public. This notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed. Notice shall not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Privacy Act Office shall, within a reasonable time, notify that individual of the disclosure. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying disclosure.

§ 515.10 Fees.

The Commission shall charge fees for duplication of records under the Privacy Act in the same way in which it charges duplication fees under § 517.9. No search or review fee may be charged for any record. Additionally, when the Privacy Act Office makes a copy of a record as a necessary part of reviewing the record or granting access to the record, the Commission shall not charge for the cost of making that copy. Otherwise, the Commission may charge a fee sufficient to cover the cost of duplicating a copy.

§ 515.11 Penalties.

Any person who makes a false statement in connection with any request for access to a record, or an amendment thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 515.12 [Reserved]

§ 515.13 Specific exemptions.

(a) The following systems of records are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1) and (f):

(1) Indian Gaming Individuals Records System.

(2) Management Contract Individuals Record System.

(b) The exemptions under paragraph (a) of this section apply only to the extent that information in these systems is subject to exemption under 5 U.S.C. 552a(k)(2). When compliance would not appear to interfere with or adversely affect the overall responsibilities of the Commission, with respect to licensing of key employees and primary management officials for employment in an Indian gaming operation, the applicable exemption may be waived by the Commission.

(c) Exemptions from the particular sections are justified for the following reasons:

(1) From 5 U.S.C. 552a(c)(3), because making available the accounting of disclosures to an individual who is the subject of a record could reveal investigative interest. This would permit the individual to take measures to destroy evidence, intimidate potential witnesses, or flee the area to avoid the investigation.

(2) From 5 U.S.C. 552a(d), (e)(1), and (f) concerning individual access to records, when such access could compromise classified information related to national security, interfere with a pending investigation or internal inquiry, constitute an unwarranted invasion of privacy, reveal a sensitive investigative technique, or pose a potential threat to the Commission or its employees or to law enforcement personnel. Additionally, access could reveal the identity of a source who provided information under an express promise of confidentiality.

(3) From 5 U.S.C. 552a(d)(2), because to require the Commission to amend information thought to be incorrect, irrelevant, or untimely, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative and investigative burden by continually forcing the Commission to resolve questions of accuracy, relevance, timeliness, and completeness.

(4) From 5 U.S.C. 552a(e)(1) because:

(i) It is not always possible to determine relevance or necessity of specific information in the early stages of an investigation.

(ii) Relevance and necessity are matters of judgment and timing in that what appears relevant and necessary when collected may be deemed unnecessary later. Only after information is assessed can its relevance and necessity be established.

(iii) In any investigation the Commission may receive information concerning violations of law under the jurisdiction of another agency. In the interest of effective law enforcement and under 25 U.S.C. 2716(b), the information could be relevant to an investigation by the Commission.

(iv) In the interviewing of individuals or obtaining evidence in other ways during an investigation, the Commission could obtain information that may or may not appear relevant at any given time; however, the information could be relevant to another investigation by the Commission.

Jonodev O. Chaudhuri,
Chairman.

Kathryn Isom-Clause,
Vice Chair.

E. Sequoyah Simermeyer,
Associate Commissioner.

[FR Doc. 2016–19749 Filed 8–25–16; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2016–0233; FRL–9951–40–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; State Operating Permit Conditions for the Control of Emissions of Volatile Organic Compounds from the Reynolds Consumer Products LLC—Bellwood Printing Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve the state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (Virginia) for the purpose of removing a consent agreement and order (consent order) previously included in the Virginia SIP to address reasonably available control technology (RACT) requirements for volatile organic compounds (VOCs) control at Reynolds Consumer Product LLC (Reynolds) plant and include a state operating permit for the Reynolds plant in the SIP to continue to address RACT requirements. In the Final Rules section of this **Federal Register**, EPA is approving the Commonwealth's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation is included in a technical support document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document or is also available electronically within the Docket for this rulemaking action. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2016–0233 at *http://*

www.regulations.gov, or via email to *fernandez.cristina@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 12, 2016.

Shawn M. Garvin,

Regional Administrator, Region III.

[FR Doc. 2016–20297 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 160614518–6518–01]

RIN 0648–XE685

Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List Chambered Nautilus as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: 90-Day petition finding, request for information.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the chambered nautilus (*Nautilus pompilius*) as a threatened species or an endangered species under the Endangered Species Act (ESA). We find that the petition, along with information readily available in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We will conduct a status review of this species to determine whether the petitioned action is in fact warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information pertaining to the chambered nautilus from any interested party.

DATES: Information and comments on the subject action must be received by October 25, 2016.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA-NMFS-2016-0098, by either of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0098.* Click the "Comment Now" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Maggie Miller, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910, USA.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the petition and related materials are available on our Web site at *http://www.fisheries.noaa.gov/pr/species/invertebrates/chambered-nautilus.html.*

FOR FURTHER INFORMATION CONTACT: Maggie Miller, Office of Protected Resources, 301–427–8403.

SUPPLEMENTARY INFORMATION:

Background

On May 31, 2016, we received a petition from the Center for Biological Diversity to list the chambered nautilus (*N. pompilius*) as a threatened species or an endangered species under the ESA. Copies of the petition are available upon request (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a "positive 90-day finding"), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a "may be warranted" finding does not prejudge the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). Because the chambered nautilus is an invertebrate, the DPS option does not apply. Under the ESA, a species or subspecies is "endangered" if it is in danger of extinction throughout all or a significant portion of its range, or "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: The present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and the U.S. Fish and Wildlife Service (50 CFR 424.14(b)) define ''substantial information'' in the context of reviewing a petition to list, delist, or reclassify a species as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, we must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

At the 90-day finding stage, we evaluate the petitioners' request based upon the information in the petition including its references considered together with the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone precludes a positive 90-day finding if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a ''species'' eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.,* population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union for Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do ''not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act'' because NatureServe assessments ''have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (*http://www.natureserve.org/prodServices/pdf/NatureServeStatusAssessmentsListing-Dec%202008.pdf*). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Taxonomy of the Petitioned Chambered Nautilus

The petition notes that the taxonomy of the nautiloids is controversial. Based on the Integrated Taxonomic Information System, which has a disclaimer that it ''is based on the latest scientific consensus available . . . [but] is not a legal authority for statutory or regulatory purposes,'' there are presently five recognized species within the genus *Nautilus: N. belauensis* (Saunders, 1981), *N. macromphalus* (Sowerby, 1849), *N. pompilius* (Linnaeus, 1758), *N. repertus* (Iredale, 1944), and *N. stenomphalus* (Sowerby, 1849). However, a review and analysis of recent genetic and morphological data suggests that perhaps only two of these five species are valid: *N. pompilius* and *N. macromphalus,* with the other three species more parsimoniously placed within *N. pompilius* (Ward *et al.,* 2016). While the taxonomy of the *Nautilus* genus may not be fully resolved, we find that the information provided by the petitioner and readily available in our files presents substantial scientific or commercial information indicating that the petitioned entity, *N. pompilius,* constitutes a valid ''species'' and is thus is a type of entity that may be eligible for listing under the ESA.

Range, Distribution and Life History

The chambered nautilus is found in tropical, coastal reef, deep-water habitats of the Indo-Pacific. Its known range includes waters off American Samoa, Australia, Fiji, India, Indonesia, Malaysia, New Caledonia, Papua New Guinea, Philippines, Solomon Islands, and Vanuatu, and it may also potentially occur in waters off China, Myanmar, Western Samoa, Thailand, and Vietnam (Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 2016). Within its range, the chambered nautilus has a patchy distribution and is unpredictable in its area of occupancy. Based on multiple research studies, the presence of suitable habitat on coral reefs does not necessarily indicate the likelihood of chambered nautilus occurrence (CITES 2016). Additionally, the chambered nautilus is limited in its horizontal and vertical distribution throughout its range due to physiological constraints. Physiologically, the chambered nautilus cannot tolerate temperatures above approximately 25 °C or depths exceeding around 750–800 meters (m) (Ward *et al.*, 1980; Carlson 2010). At depths greater than 800 m, the hydrostatic pressure will cause the shell of the nautilus to implode, thereby killing the animal (Ward *et al.*, 1980). Based on these physiological constraints, the chambered nautilus is considered to be an extreme habitat specialist, found in association with steep-sloped forereefs with sandy, silty, or muddy-bottomed substrates. Within these habitats, the species ranges from around 100 m depths (which may vary depending on the water temperature) to around 500 m depths (CITES 2016). The chambered nautilus does not swim in the open water column (likely due to its vulnerability to predation), but rather remains near the reef slopes and bottom substrate, and thus can be best characterized as a nektobenthic or epibenthic species (Barord *et al.*, 2014; CITES 2016).

Chambered nautiluses are described as deep-sea scavenging generalists and opportunistic predators. They have up to 90 retractable appendages, or tentacles, that they use to dig in the substrate and feed on a variety of organisms, including fish, crustaceans, echinoids, nematodes, cephalopods, other marine invertebrates, and detrital matter (Saunders and Ward 2010). The chambered nautilus also has an acute sense of olfaction and can easily smell odors (such as prey) from significant distances (Basil *et al.*, 2000).

The general life history characteristics of the chambered nautilus are that of a rare, long-lived, late-maturing, and slow-growing marine invertebrate species, with likely low reproductive output. Circumferential growth rate for the chambered nautilus has been estimated to range from 0.053 mm/day to 0.23 mm/day, with growth rates slowing as the animal approaches maturity (Dunstan *et al.*, 2010; Dunstan *et al.*, 2011b); however, overall shell size appears to vary among regions, with smaller shell diameters (170–180 mm) noted around Fiji and the Philippines (Tanabe *et al.*, 1990), and larger diameters (up to 222 mm) off Western Australia. Additionally, the species exhibits sexual dimorphism, with males consistently growing to larger sizes than females (Saunders and Ward 2010). Males also tend to dominate the sex ratios in populations, with observed proportions ranging from 69 to 95 percent in observed populations (Saunders and Ward 2010).

Chambered nautilus longevity is at least 20 years, with age to maturity between 10 and 17 years (Dunstan *et al.*, 2011b; Ward *et al.*, 2016). Very little is known regarding nautilus reproduction in the wild. Observations of captive animals suggest that nautiluses reproduce sexually and have multiple reproductive cycles over the course of their lifetime. Based on data from captive *N. belauensis* and *N. macromphalus* individuals, female nautiluses may lay up to 10 to 20 eggs per year, which hatch after a lengthy embryonic period of around 10 to 12 months (Uchiyama and Tanabe 1999; Barord and Basil 2014). There is no larval phase, with juveniles hatching at around 22–23 mm in diameter, and potentially migrating to deeper and cooler waters (Barord and Basil 2014); however, live hatchlings have rarely been observed in the wild.

Overall, given the life history traits and physiological habitat constraints of *N. pompilius*, chambered nautilus populations (discussed in more detail below) are extremely susceptible to depletion and vulnerable to local extirpations (CITES 2016).

Analysis of Information Presented in the Petition Along With Information Readily Available in NMFS' Files

The petition contains information on the chambered nautilus, including its taxonomy, morphological characteristics, geographic distribution, habitat, population abundance and trends, and factors contributing to the species' decline. According to the petition, all five causal factors in section 4(a)(1) of the ESA are adversely affecting the continued existence of the chambered nautilus: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors.

In the following sections, we summarize and evaluate the information presented in the petition, which we consider together with information readily available in our files on the status of *N. pompilius,* including demographic factors, and the ESA section 4(a)(1) factors that may be affecting its risk of global extinction. Based on this evaluation, we determine whether a reasonable person would conclude that an endangered or threatened listing under the ESA may be warranted for this species.

Abundance and Population Trends

The global abundance of the chambered nautilus is unknown, with no available historical baseline population data. In fact, the first study to estimate baseline population size and density for the species, in a given area, was only recently conducted by Dunstan *et al.*, (2011a). This study examined the *N. pompilius* population at Osprey Reef, an isolated coral seamount off Australia's northeastern coast, with no history of nautilus exploitation. Based on data collected from 2000 to 2006, the authors estimated that the population at Osprey Reef consisted of between 844 and 4,467 individuals, with a density estimate of 13.6 individuals per square kilometer (km^2) (Dunstan *et al.*, 2011a). Subsequent research, conducted by Barord *et al.*, (2014), provided density estimates of nautiluses (species not identified) from four locations in the Indo-Pacific: The Panglao region of the Bohol Sea, Philippines, with 0.03 individuals per km^2, Taena Bank near Pago Pago harbor, American Samoa, with 0.16 individuals per km^2, the Beqa Passage in Viti Levu, Fiji, with 0.21 individuals per km^2, and the Great Barrier Reef along a transect from Cairns to Lizard Island, Australia, with 0.34 individuals per km^2. With the exception of the Bohol Sea, these populations are located in areas where fishing for nautilus does not occur, suggesting that nautiluses may be naturally rare, or that other unknown factors, besides fishing, may be affecting abundance of these species. The authors also indicate that the population estimates from this study may, in fact, be overestimates as they used baited remote underwater video systems to attract individuals to the observation area (Barord *et al.,* 2014). In either case, these very low population estimates suggest that chambered nautiluses are especially vulnerable to exploitation, with limited capacity to recover from depletion. This theory is further supported by the comparison between the population size in the Panglao region of the Bohol Sea, where nautilus fishing is occurring, and the unfished sites in American Samoa, Fiji, and Australia, with the Bohol Sea population estimated to be less than 20 percent of the smallest unfished population (Barord *et al.,* 2014).

In terms of current trends in abundance, populations are considered to be stable in areas where fisheries are absent (*e.g.,* Fiji and Solomon Islands), although data to confirm this are lacking (CITES 2016). In the Osprey Reef population discussed above, Dunstan *et al.* (2010) used mark-and-recapture methods to examine the trend in the catch per unit effort (CPUE) of individuals over a 12-year period. Analysis of the CPUE data showed a slight increase of 28 percent from 1997 to 2008, and while this increase was not statistically significant, the results indicate a stable *N. pompilius* population in this unexploited area (Dunstan *et al.,* 2010). However, in locations where fisheries have operated or currently operate, anecdotal declines and observed decreases in catches of nautilus species are reported. Citing multiple personal communications, the 2016 proposal to include the Family Nautilidae in Appendix II of CITES (CITES 2016) noted declines of *N. pompilius* in Indian and New Caledonian waters, where commercial harvest occurred in the past for several decades, and in Indonesian waters, where harvest is suspected to be increasing. In fact, traders in Indonesia have observed a significant decrease in the number of nautiluses collected over the past 10 years, which may be an indication of a declining and depleted population (Freitas and Krishnasamy 2016). In the Philippines, Dunstan *et al.* (2010) estimated that the CPUE of *Nautilus* spp. from four main nautilus fishing locations in the Palawan region has decreased by around 80 percent over a period of less than 30 years. Furthermore, in Tawi Tawi, Cayangacillo, and Tañon Strait/Cebu, Philippines, fisheries that once existed for chambered nautilus have since been discontinued due to the rarity of the species, with Alcala and Russ (2002) noting the likely extirpation of *N. pompilius* from Tañon Strait in the late 1980s. The fact that the species has not yet recovered in the Tañon Strait, despite an absence of nautilus fishing in over two decades, further supports the susceptibility of the species to exploitation and its limited capability to repopulate an area after depletion.

Overall, given the species' natural rarity throughout its range, its presence as small, sparsely distributed, and highly fragmented populations, and its low fecundity and limited dispersal capability, with geographic barriers to movement and strict habitat requirements, we find that even a small number of mortalities could potentially have significant negative population-level effects that may lead to regional extirpations (as may have already occurred in Tañon Strait) and potentially extinction. As such, we find that these current demographic risks could increase the species' vulnerability to present and future threats to the point where the species may be at a risk of extinction and thus warrant further investigation.

Analysis of ESA Section 4(a)(1) Factors

While the petition presents information on each of the ESA section 4(a)(1) factors, we find that the information presented in the petition, together with information readily available within our files, regarding the overutilization of the chambered nautilus for commercial purposes is substantial enough to make a determination that a reasonable person would conclude that this species may warrant listing as endangered or threatened based on this factor alone. As such, we focus our discussion below on the evidence of overutilization for commercial purposes, with comments on the inadequacy of existing regulatory mechanisms to control the exploitation of chambered nautiluses, and present our evaluation of the information regarding these factors and their impact on the extinction risk of the species. However, we note that in the status review for this species, we will evaluate all ESA section 4(a)(1) factors to determine whether any one or a combination of these factors are causing declines in the species or likely to substantially negatively affect the species within the foreseeable future to such a point that the chambered nautilus is at risk of extinction or likely to become so in the foreseeable future.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information presented in the petition and readily available in our files suggests that the primary threat to the chambered nautilus is overutilization for commercial purposes—mainly, harvest for the international nautilus shell trade. Chambered nautilus shells, which have a distinctive coiled interior, are traded as souvenirs to tourists and shell collectors and also used in jewelry and home décor items (where either the whole shell is sold as a decorative object or parts are used to create shell-inlay designs) (CITES 2016). The trade in the species is largely driven by the international demand for their shells and shell products since fishing for nautiluses has been found to have no cultural or historical relevance (Dunstan *et al.,* 2010; De Angelis 2012; CITES 2016; Freitas and Krishnasamy 2016). Nautilus meat is also not locally in demand (or used for subsistence) but rather sold or consumed as a by-product of fishing for the nautilus shells (De Angelis 2012; CITES 2016). While all species of nautiluses are found in international trade, *N. pompilius,* being the most widely distributed, is the species most commonly traded (CITES 2016).

Although most of the trade in chambered nautiluses originates from the range countries where fisheries exist or have existed for the species, particularly the Philippines and Indonesia, commodities also come from those areas with no known fisheries (such as Fiji and Solomon Islands). Other countries of origin for *N. pompilius* products include Australia, China, Taiwan, India, Malaysia, New Caledonia, Papua New Guinea, Vanuatu, and Vietnam (Freitas and Krishnasamy 2016). Known consumer markets for chambered nautilus products include the Middle East (United Arab Emirates, Saudi Arabia), Australia, Singapore, Malaysia, Indonesia, Philippines, Hong Kong, Russia, Korea, Japan, China, Taiwan and India, with major consumer markets noted in the European Union (Italy, France, Portugal), the United Kingdom, and the United States (Freitas and Krishnasamy 2016). In fact, between 2005 and 2014, the United States imported more than 900,000 chambered nautilus products, comprising at least 104,476 individuals and equating to a little over 1,000 individuals traded annually (CITES 2016). The vast majority of these U.S. imports originated from the Philippines (85 percent of the traded commodities), followed by Indonesia (12 percent), China (1.4 percent), and India (1.3 percent) (CITES 2016).

Because harvest of the chambered nautilus is primarily demand-driven for the international shell trade, with no historical or cultural importance, the intensive nautilus fisheries that develop to meet this demand tend to follow a boom-bust cycle that lasts around a decade or two before becoming commercially nonviable (Dunstan *et al.*, 2010; De Angelis 2012; CITES 2016). Given that the chambered nautilus exists as small, isolated populations, harvest of the species may continue for many years within a region, with the fisheries serially depleting each population until the species is essentially extirpated from that region (CITES 2016). Commercial harvest of the species is presently occurring or has occurred in the Philippines, Indonesia, New Caledonia, Papua New Guinea, and also potentially in China, Palau, Thailand and Vanuatu (CITES 2016). However, based on the number of commodities entering the international trade, it is likely that the Philippines and Indonesia have the largest commercial fisheries for chambered nautilus, with multiple harvesting sites throughout these nations (CITES 2016). Although information on harvest levels and the status of chambered nautilus populations within this portion of its range is limited, the available data, discussed below, do provide evidence of the negative impact of these fisheries and overutilization of the species that speak to the likelihood of its risk of extinction in the future.

As mentioned previously, significant declines of *N. pompilius* have been observed in both the Philippines and Indonesia, primarily a result of overutilization of the species. For example, in 1971, Haven (1972 cited in Haven (1977)) found that Tañon Strait, Philippines, was an abundant source of *N. pompilius.* From 1971 to 1972, around 3,200 individuals were captured for study (Haven 1977). Filipino fisherman also began fishing this location for nautilus shells around this time, with the numbers of fishermen tripling during subsequent years; however, by 1975, the impact of this harvest on the species was already evident (Haven 1977). Fishermen in 1975 reported having to move operations to deeper water as catches were now rare at shallower depths, and the number of individuals per trap had also decreased (Haven 1977). Additionally, although the number of fishermen had tripled in those 3 years, and therefore fishing effort for the species intensified, the catch did not see an associated increase, indicating a likely decrease in the abundance of the species within the area (Haven 1977). From October to November of 1975, fishermen reported around 220 trapped individuals, a number similar to the 300 individuals caught by Haven (1977) in the month of October in 1971 and prior to the establishment of the nautilus fishery. By the early 1980s, CITES (2016) reports that around 5,000 chambered nautiluses were trapped per year in Tañon Strait, but by 1987, the population was estimated to have declined by 97 percent, with the species considered to be commercially extinct and potentially extirpated from the area (Alcala and Russ 2002).

This level of harvest (5,000 chambered nautilus individuals/year), which, based on the information from the Tañon Strait, appears to lead to local extirpations, is being greatly exceeded in a number of other areas throughout the chambered nautilus' range. In Tibiao, Antique province, in northwestern Panay Island, Philippines, del Norte-Campos (2005) estimated annual yield of the chambered nautilus to be around 12,200 individuals for the entire fishery (based on data from 2001–2002). Based on personal communication provided in CITES (2016), in the Palawan, Philippines nautilus fishery, 9,091 nautiluses were harvested in 2013 and 37,341 in 2014. This level of harvest is particularly concerning given the significant declines already observed in the Palawan nautilus fisheries. In four of the five main nautilus fishing areas in this province, Dunstan *et al.* (2010) estimated a decline in CPUE of the species ranging from 70 to 90 percent (depending on the fishing site) over the course of 6 to 24 years. Based on interviews of fishermen, when they began fishing for nautiluses, initial harvest in the majority of the fishing sites was estimated to be over 20,000 nautiluses/year (Dunstan *et al.*, 2010), a level that was clearly unsustainable for the species and consequently led to significant declines in abundance of the species within these areas. The one main fishing region in Palawan that did not show a decline was the municipality of Balabac; however, the authors note that this fishery is relatively new (active for less than 8 years), with fewer fishermen, and, as such, may not have yet reached the point where the population crashes or declines become evident in catch rates (Dunstan *et al.*, 2010). Given that the estimated annual catches in the Balabac municipality ranged from 4,000 to 42,000 individuals in 2008 (Dunstan *et al.*, 2010), with more recent Palawan harvest levels reportedly over 37,000 in 2014 (CITES 2016), this level of annual harvest, based on the trends from the other Palawan fishing sites (Dunstan *et al.*, 2010), may likely lead to significant population declines in chambered nautilus in the near future, increasing the species' risk of extirpation from this portion of its range. Already, "crashed fisheries" and, hence, severely depleted populations of nautiluses have been identified at Tawi Tawi (an island province in southwestern Philippines) and Cagayancillo (an island in the Palawan province) (Dunstan *et al.*, 2010). From the available data in the petition and readily available in our files on the life history of the species, including current trends and evidence of a lack of recovery in populations that have not been fished for over 30 years, we find that present utilization of the species in this portion of its range may have significant negative effects on the viability of the chambered nautilus populations and, consequently, contribute to an extinction risk that is cause for concern and warrants further investigation.

Overutilization of the chambered nautilus populations off Indonesia may also be a threat contributing to the species' risk of extinction that is cause for concern. Despite Indonesia's current prohibition (implemented in 1999) on the harvest and trade of the species, both domestic and internationally, it is apparent that both are still occurring throughout Indonesia (Nijman *et al.*, 2015; Freitas and Krishnasamy 2016). In fact, based on the increasing number of chambered nautilus commodities originating from Indonesia, it is suggested that nautilus fishing has potentially shifted to Indonesian waters due to depletion of the species in the Philippines (CITES 2016). However, similar to the trend observed in the Philippines, a pattern of serial depletion of nautiluses due to harvesting in Indonesia is emerging, with both fishermen and traders noting a significant decline in the numbers of chambered nautiluses over the last 10 years (CITES 2016; Freitas and Krishnasamy 2016). For example, fishermen in North Lombok note that they used to trap around 10 to 15 nautiluses in one night, but currently catch only 1 to 3 a night (Freitas and Krishnasamy 2016). Similarly, in Bali, fishermen reported nightly catches of around 10 to 20 nautiluses until 2005, after which yields have been much less (Freitas and Krishnasamy 2016). While fishing for chambered nautiluses has essentially decreased in western Indonesia (likely due to a depletion of the stocks), the main trade centers for nautilus commodities are still located here (*i.e.*, Java, Bali, Sulawesi and Lombok). The sources of nautilus shells for these centers now appears to originate from eastern Indonesian waters (including northeastern Central Java, East Java, and West Nusa Tengarra eastward) where it is thought that nautilus populations may still be abundant enough to support economically viable fisheries, and where enforcement of the current *N. pompilius* prohibition appears to be weaker (Nijman *et al.,* 2015; Freitas and Krishnasamy 2016). Data collected from two large open markets in Indonesia (Pangandaran and Pasir Putih) and wholesale traders indicate that chambered nautiluses are still being offered for sale as of 2013, with one of the wholesalers noting that he exports merchandise to Malaysia and Saudi Arabia on a bimonthly basis (Nijman *et al.,* 2015). Based on seizure data from 2005 to 2013, over 3,000 chambered nautiluses were confiscated by Indonesian authorities (Nijman *et al.,* 2015). Additionally, De Angelis (2012), citing a personal communication, estimated that around 25,000 nautilus specimens were exported from Indonesia to China for the Asian meat market between 2007 and 2010. Given the ongoing demand for chambered nautilus products, the apparent disregard of current prohibition regulations by collectors and traders and lack of enforcement, the observed declining trends in *N. pompilius* fisheries, and the increasing number of nautilus commodities originating from Indonesia, we find that the available information in the petition, together with information readily available in our files, suggest current *N. pompilius* harvest levels within this portion of its range may be contributing to the overutilization of the species and increasing its risk of extinction that is cause for concern.

Active nautilus fisheries also existed and still exist throughout most of the remaining extent of the species' known range, including in India, New Caledonia, Vanuatu, and potentially Papua New Guinea. In India, CITES (2016) states that the chambered nautilus has been exploited for decades. A 2007 survey found the species was being sold in 20 percent of the major coastal tourist markets in southern India, despite the species being protected from capture and trade by domestic law since 2000 (CITES 2016). In New Caledonia, intensive nautilus fisheries reportedly existed in the past. It is unclear whether commercial fisheries still exist today for the species; however, based on data from 2008, *N. pompilius* shells are still being sold to tourists (CITES 2016). In Vanuatu and Papua New Guinea, targeted chambered nautilus fisheries may be present; however, these fisheries have yet to be investigated (NMFS 2014; CITES 2016). Overall, out of the 11 nations in which *N. pompilius* is known to occur, over half historically or current have targeted nautilus fisheries.

We note that, while the species is afforded some protection in the southern portion of its range, particularly in waters off Australia where there is no commercial harvest for the species (CITES 2016), it is unclear whether these populations may be enough to protect the species from potential extinction throughout all or a significant portion of its range. This conclusion is based on the considerations described above, including the significant uncertainties associated with the species' life history and its high demographic risks, as supported by information presented in the petition together with information readily available in our files. The potential contribution of these populations to the species will be investigated further during the status review of the species.

Although the petition identifies numerous other threats to the chambered nautilus, including habitat degradation, predation, climate change, and ocean acidification, we find that the information presented in the petition, together with information readily available in our files, suggest that overutilization of the species for commercial purposes, in and of itself, may be a threat impacting the chambered nautilus to such a degree that raises concern that this species may be at risk of extinction presently or in the foreseeable future. Due to the apparent lack of enforcement and the inadequacy of existing regulatory mechanisms, particularly throughout the northern portion of the species' range, the ongoing demand for the species in the international shell trade, the significant demographic risks faced by the species (including extremely low productivity and rare, fragmented, and isolated populations with limited dispersal capability) and the evidence of substantial declines in populations and potential extirpations, we find that present harvest levels and associated mortality may be placing the species at such a risk of extinction that would lead a reasonable person to conclude that *N. pompilius* may warrant listing as a threatened or endangered species throughout all or a significant portion of its range.

Petition Finding

After reviewing the information presented in the petition, and considering information readily available in our files, and based on the above analysis, we conclude the petition presents substantial scientific information indicating that the petitioned action of listing the chambered nautilus as a threatened or endangered species may be warranted. Therefore, in accordance with section 4(b)(3)(B) of the ESA and NMFS' implementing regulations (50 CFR 424.14(b)(3)), we will commence a status review of this species.

During the status review, we will determine whether the chambered nautilus is in danger of extinction (endangered) or likely to become so (threatened) throughout all or a significant portion of its range. We now initiate this review, and thus, *N. pompilius* is considered to be a candidate species (69 FR 19975; April 15, 2004). Within 12 months of the receipt of the petition (May 31, 2017), the statute requires that we make a finding as to whether listing the chambered nautilus as an endangered or threatened species is warranted as required by section 4(b)(3)(B) of the ESA. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule.

Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting information on whether the chambered nautilus is endangered or threatened. Specifically, we are soliciting information in the following areas: (1) Historical and current distribution and abundance of this species throughout its range; (2) historical and current population trends; (3) life history in marine environments; (4) historical and current data on nautilus catch and bycatch in industrial, commercial, artisanal, and recreational fisheries worldwide; (5) impacts to known chambered nautilus habitats; (5) data on the trade of chambered nautilus products, including shells, meat, and live specimens; (6) impacts of the ecotourism industry on chambered nautilus behavior and survival; (7) predation rates on chambered nautilus; (8) any current or planned activities that may adversely impact the chambered nautilus or its habitat; (9) ongoing or planned efforts to protect and restore this species and its habitat; (10) population structure information, such as genetics data; and (11) management, regulatory, and enforcement information. We request that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

References Cited

A complete list of references is available upon request to the Office of Protected Resources (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2016–20478 Filed 8–25–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 166
Friday, August 26, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Advocacy and Outreach

Submission for OMB Review; Comment Request

August 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 26, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of Advocacy and Outreach

Title: USDA/1994 Tribal Scholars Program.

OMB Control Number: 0503–0016.

Summary of Collection: The purpose of the U.S. Department of Agriculture 1994 Tribal Scholars Program is to strengthen the long-term partnership between USDA and the 1994 Land-Grant Institutions to increase the number of students studying and graduating in food, agricultural, natural resources, and other related fields of study, and to develop a pool of scientists and professionals to annually fill 50,000 jobs in the food, agricultural, and natural resources system. The USDA/1994 Tribal Scholars Program, within the Office of the Assistant Secretary for Administration, Office of Advocacy and Outreach, is an annual joint human capital initiative between USDA and the Nation's 1994 Land-Grant Institutions, also known as 1994 Tribal Colleges and Universities. This program offers a combination of paid work experience with a USDA sponsoring agency through an appointment under the Fellowship Experience Program. USDA Tribal Scholarship recipients are required to study in the food, and agricultural, and related sciences, as defined by the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3103 (8)).

Need and Use of the Information: Information will be collected to determine the eligibility of applicants to the USDA Tribal Scholars Program. Each applicant to the program will be required to apply to announcements of the USDA Tribal Scholars Program and submit an application with required documentation. The required documentation will include: (1) A resume; (2) Proof of acceptance or enrollment in school, a letter of acceptance, or proof of registration, or letter from school official on official letterhead; (3) A copy of the last high school or college transcript; and (4) Two letters of recommendation. The collected information is needed for identifying and tracking capital needs of USDA agencies from 1994 Land-Grant Institutions through an internship and an award of an annually reviewed and renewal scholarship with the objective of preparing the student to complete for placement into USDA's workforce.

Description of Respondents: Individuals or households.

Number of Respondents: 300.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 360.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–20518 Filed 8–25–16; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Submission for OMB Review; Comment Request

August 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by September 26, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: On-line Registration for FSA-Hosted Events and Conferences.

OMB Control Number: 0560–0226.

Summary of Collection: The collect of information is necessary for people to register on-line to make payment and reservation to attend Farm Service Agency (FSA) hosted events and conferences. The respondents will need to submit the information on-line to pay and to make reservation prior to attending any conferences and events. Respondents that do not have access to the Internet can register by mail or fax.

Need and Use of the Information: FSA will collect the name, organization, organizations address, country, phone number, State, payment options and special accommodations from respondents. The information collection element also include race, ethnicity, gender and veteran status. FSA will use the information to get payment, confirm and make hotel and other necessary arrangement for the respondents. FSA is adding new elements in the online registration format to assist individuals and to gather information to provide an appropriate FSA-hosted conference and events. The new elements include: Specifying a request for a type of disability services, identifying how they learned about the event, providing additional names to invite to the event, waiver for liability, and demographic information including gender, race, and ethnicity. The new elements will not increase the burden hours because it is all self-explanatory for the respondent to complete the online format.

Description of Respondents: Individuals or households; Farms: Business or other for-profit; Federal government, Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–20542 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2016–0028]

Notice of Request To Renew an Approved Information Collection (Interstate Shipment of Meat and Poultry Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to renew the approved information collection regarding the voluntary cooperative interstate shipment program. The approval for this information collection will expire on January 31, 2017.

DATES: Submit comments on or before October 25, 2016.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.*: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Docket Clerk, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163A, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2016–0028. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW., Room 6065, South Building, Washington, DC 20250; (202)720–5627.

SUPPLEMENTARY INFORMATION:

Title: Interstate Shipment of Meat and Poultry.

OMB Control Number: 0583–0143.

Type of Request: Renewal of an approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53) as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). FSIS protects the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and correctly labeled.

FSIS administers a voluntary cooperative inspection program under which State-inspected establishments with 25 or fewer employees are eligible to ship meat and poultry products in interstate commerce (21 U.S.C. 683 and U.S.C. 472) (9 CFR 321.3, Part 332, 381.187, and Part 381 Subpart Z). In participating States, State-inspected establishments selected to take part in this program are required to comply with all Federal standards under the FMIA and the PPIA, as well as with all State standards. These establishments receive inspection services from State inspection personnel that have been trained in the enforcement of the FMIA and PPIA.

Meat and poultry products produced under the program that have been inspected and passed by designated State personnel bear an official Federal mark of inspection and are permitted to be distributed in interstate commerce. FSIS provides oversight and enforcement of the program.

States that are interested in participating in the cooperative interstate shipment program need to submit a request for an agreement to establish such a program through the appropriate FSIS District Office (9 CFR 332.4 and 381.514). In its request, a State must agree to comply with certain conditions in order to qualify for the interstate shipment program. The State must also: (1) Identify establishments in the State that the State recommends for initial selection into the program, if any, and (2) include documentation to demonstrate that the State is able to provide necessary inspection services to selected establishments in the State and conduct any related activities that would be required under a cooperative interstate shipment program.

If a State determines that an establishment qualifies to participate in the cooperative interstate shipment program, and the State is able, and willing, to provide the necessary inspection services at the establishment, the State is to submit its evaluation of the establishment to the FSIS District Office that covers the State (74 FR 24729).

FSIS, in coordination with the State, will then decide whether to select the establishments for the program.

Establishments that qualify for this program have to meet all requirements under the FMIA or PPIA, and implementing regulations, including FSIS requirements for recordkeeping (9 CFR 332.5 and 381.515). Most State-inspected establishments will already have met these recordkeeping requirements, but some establishments will need to make minor adjustments to their recordkeeping in order to meet FSIS requirements.

The FSIS selected establishment coordinator (SEC) is responsible for overseeing a State's cooperative inspection program. The SEC will visit each selected establishment in the State on a regular basis to verify that the establishment is operating in a manner that is consistent with the FMIA or PPIA and the implementing regulations (9 CFR 332.7 and 381.517).

The approval for this information collection will expire on January 31, 2017. There are no changes to the existing information collection. FSIS has made the following estimates on the basis of an information collection assessment.

Estimate of Burden: FSIS estimates that it will take each new State an average of 40 hours to prepare and submit a request to establish a cooperative interstate shipment program.

FSIS estimates that it will take each State 24 hours to prepare and submit an evaluation for each new establishment entering the program. FSIS estimates that States will submit approximately 3 evaluations per year.

FSIS estimates that 15 establishments per year will spend 16 hours to modify their recordkeeping procedures to comply with Federal standards and 5 minutes per establishment to file these records.

FSIS estimates that it will take each new establishment 15 minutes to assist the SEC in locating locate the necessary records for review on the initial visit. Every selected establishment will spend 10 minutes assisting the SEC review of its records approximately once a month.

Respondents: States and establishments.

Estimated No. of Respondents: 20 states and 60 establishments.

Estimated No. of Annual Responses per Respondent: FSIS estimates there will be one request per each new State to establish a cooperative interstate shipment program and approximately 3 evaluations of State-inspected establishments per State. There will be a one-time modification of records for each newly selected establishment whose recordkeeping does not comply with all Federal standards.

There will be one initial SEC visit in which each newly selected establishment will need to provide the SEC with access to all required records. Each establishment selected for the program will need to provide the FSIS access to its records on an ongoing basis. The total number of estimated annual responses is 830.

Estimated Total Annual Burden on Respondents: 2,005 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Ave. SW., 6065, South Building, Washington, DC 20250; (202)720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

Responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

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How to File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.
Fax: (202) 690–7442.
Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on August 19, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–20225 Filed 8–25–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Adjustment of Appendices for Dairy Tariff-Rate Import Quota Licensing for the 2016 Tariff-Rate Quota Year

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the revised appendices for Dairy Tariff-Rate Import Quota Licensing for the 2016 quota year reflecting the cumulative annual transfers from Appendix 1 to Appendix 2 for certain dairy product import licenses permanently surrendered by licensees or revoked by the Licensing Authority.

DATES: Effective August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Abdelsalam El-Farra, Dairy Import Licensing Program, Import Policies and Export Reporting Division, U.S. Department of Agriculture, at (202) 720–9439; or by email at: *abdelsalam.el-farra@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The Foreign Agricultural Service, under a delegation of authority from the Secretary of Agriculture, administers the Dairy Tariff-Rate Import Quota Licensing Regulation codified at 7 CFR 6.20–6.36 that provides for the issuance of licenses to import certain dairy articles under tariff-rate quotas (TRQs) as set forth in the Harmonized Tariff Schedule of the United States. These dairy articles may only be entered into the United States at the low-tier tariff by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The Import Policies and Export Reporting Division, Foreign Agricultural Service, U.S. Department of Agriculture, issues these licenses and, in conjunction with U.S. Customs and Border Protection, U.S. Department of Homeland Security, monitors their use.

The regulation at 7 CFR 6.34(a) states: "Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2." Section 6.34(b) provides that the cumulative annual transfers will be published in the **Federal Register**. Accordingly, this document sets forth the revised Appendices for the 2016 tariff-rate quota year.

Issued at Washington, DC, the 13th day of July, 2016.

Ronald Lord,

Licensing Authority.

BILLING CODE 3410–10–P

Articles Subject to: Appendix 1, Historical Licenses; Appendix 2 Non-historical Licenses; and Appendix 3, Designated Importers Licenses for Quota Year 2016 (quantities in Kilograms)

				Appendix 3			**HTS**
NON-CHEESE ARTICLES	**Appendix 1**	**Appendix 2**	**Sum of Appendix 1&2**	**Tokyo R.**	**Uruguay R.**	**Grand Total**	**Chapter 4/2014**
BUTTER (NOTE 6)	**4,447,995**	**2,529,005**	**6,977,000**			**6,977,000**	**6,977,000**
EU-27	62,599	33,562	96,161				
New Zealand	88,264	62,329	150,593				
Other Countries	37,155	36,780	73,935				
Any Country	4,259,977	2,396,334	6,656,311				
DRIED SKIM MILK (NOTE 7)		**5,261,000**	**5,261,000**			**5,261,000**	**5,261,000**
Australia	0	600,076	600,076				
Canada	0	219,565	219,565				
Any Country	0	4,441,359	4,441,359				
DRIED WHOLE MILK (NOTE 8)	**0**	**3,321,300**	**3,321,300**			**3,321,300**	**3,321,300**
New Zealand	0	3,175	3,175				
Any Country	0	3,318,125	3,318,125				
DRIED BUTTERMILK/WHEY (NOTE 12)	**0**	**224,981**	**224,981**			**224,981**	**224,981**
Canada	0	161,161	161,161				
New Zealand	0	63,820	63,820				
BUTTER SUBSTITUTES CONTAINING OVER 45 PERCENT OF BUTTERFAT AND/OR BUTTER OIL (NOTE 14)	**0**	**6,080,500**	**6,080,500**			**6,080,500**	**6,080,500**
Any Country	0	**6,080,500**	6,080,500				
TOTAL: NON-CHEESE ARTICLES	**4,447,995**	**17,416,786**	**21,864,781**			**21,864,781**	**21,864,781**
				Appendix 3			**HTS**
CHEESE ARTICLES	**Appendix 1**	**Appendix 2**	**Sum of Appendix 1&2**	**Tokyo R.**	**Uruguay R.**	**Grand Total**	**Chapter 4/2014**
CHEESE AND SUBSTITUTES FOR CHEESE (NOTE 16)	**18,194,466**	**13,275,265**	**31,469,731**	**9,661,128**	**7,496,000**	**48,626,859**	**48,626,859**
Argentina	0	7,690	7,690	92,310		100,000	100,000
Australia	535,628	5,542	541,170	758,830	1,750,000	3,050,000	3,050,000
Canada	977,439	163,561	1,141,000			1,141,000	1,141,000
Costa Rica	0	0	0		1,550,000	1,550,000	1,550,000
EU-27	14,179,240	9,088,416	23,267,656	1,132,568	3,446,000	27,846,224	27,493,224
Of which Portugal is:	65,838	63,471	129,309	223,691		353,000	353,000
Israel	79,696	0	79,696	593,304		673,000	673,000

Iceland	29,054	264,946	294,000	29,000		323,000	323,000
New Zealand	1,576,857	3,238,615	4,815,472	6,506,528		11,322,000	11,322,000
Norway	122,860	27,140	150,000			150,000	150,000
Switzerland	526,948	144,464	671,412	548,588	500,000	1,720,000	1,720,000
Uruguay	0	0	0		250,000	250,000	250,000
Other Countries	100,906	100,729	201,635			201,635	201,635
Any Country	0	300,000	300,000			300,000	300,000
BLUE-MOLD CHEESE (NOTE 17)	**1,936,818**	**544,183**	**2,481,001**		**430,000**	**2,911,001**	**2,911,001**
Argentina	2,000	0	2,000			2,000	2,000
EU-27	1,934,818	544,182	2,479,000		350,000	2,829,000	2,829,000
Chile	0	0	0		80,000	80,000	80,000
Other Countries	0	1	1			1	1
CHEDDAR CHEESE (NOTE 18)	**2,328,517**	**1,955,339**	**4,283,856**	**519,033**	**7,620,000**	**12,422,889**	**12,422,889**
Australia	891,246	93,253	984,499	215,501	1,250,000	2,450,000	2,450,000
Chile	0	0	0		220,000	220,000	220,000
EU-27	52,404	210,596	263,000		1,050,000	1,313,000	1,313,000
New Zealand	1,283,254	1,513,214	2,796,468	303,532	5,100,000	8,200,000	8,200,000
Other Countries	101,613	38,276	139,889			139,889	139,889
Any Country	0	100,000	100,000			100,000	100,000
AMERICAN-TYPE CHEESE (NOTE 19)	**1,218,849**	**1,946,704**	**3,165,553**	**357,003**	**0**	**3,522,556**	**3,522,556**
Australia	761,890	119,108	880,998	119,002		1,000,000	1,000,000
EU-27	136,075	217,925	354,000			354,000	354,000
New Zealand	213,145	1,548,854	1,761,999	238,001		2,000,000	2,000,000
Other Countries	107,739	60,817	168,556			168,556	168,556
EDAM AND GOUDA CHEESE (NOTE 20)	**4,317,066**	**1,289,336**	**5,606,402**	**0**	**1,210,000**	**6,816,402**	**6,816,402**
Argentina	105,418	19,582	125,000		110,000	235,000	235,000
EU-27	4,095,840	1,193,160	5,289,000		1,100,000	6,389,000	6,389,000
Norway	111,046	55,954	167,000			167,000	167,000
Other Countries	4,762	20,640	25,402			25,402	25,402
ITALIAN-TYPE CHEESES (NOTE 21)	**6,107,184**	**1,413,363**	**7,520,547**	**795,517**	**5,165,000**	**13,481,064**	**13,481,064**
Argentina	3692345	433,138	4,125,483	367,517	1,890,000	6,383,000	6,383,000
EU-27	2,414,839	967,161	3,382,000		2,025,000	5,407,000	5,407,000
Romania	0	0	0		500,000	500,000	500,000
Uruguay	0	0	0	428,000	750,000	1,178,000	1,178,000
Other Countries	0	13,064	13,064			13,064	13,064
SWISS OR EMMENTHALER CHEESE (NOTE 22)	**4,447,120**	**2,204,194**	**6,651,314**	**823,519**	**380,000**	**7,854,833**	**7,854,833**
EU-27	3192836	1,959,158	5,151,994	393,006	380,000	5,925,000	5,925,000
Switzerland	1220786	198,701	1,419,487	430,513		1,850,000	1,850,000
Other Countries	33498	46,335	79,833			79,833	79,833

CHEESE AND SUBSTITUTES FOR CHEESE (NOTE 23)	**1,183,816**	**3,241,092**	**4,424,908**	**1,050,000**	**0**	**5,474,908**	**5,474,908**
EU-27	1,183,816	3,241,091	4,424,907			4,424,907	4,424,907
Israel	0	0	0	50,000		50,000	50,000
New Zealand	0	0	0	1,000,000		1,000,000	1,000,000
Other Countries	0	1	1			1	1
SWISS OR EMMENTHALER CHEESE WITH EYE FORMATION (NOTE 25)	**13,471,643**	**8,825,688**	**22,297,331**	**9,557,945**	**2,620,000**	**34,475,276**	**34,475,276**
Argentina	0	9,115	9,115	70,885		80,000	80,000
Australia	209,698	0	209,698	290,302		500,000	500,000
Canada	0	0	0	70,000		70,000	70,000
EU-27	10,066,071	6,410,757	16,476,828	4,003,172	2,420,000	22,900,000	22,900,000
Iceland	0	149,999	149,999	150,001		300,000	300,000
Israel	27,000	0	27,000			27,000	27,000
Norway	2,361,252	1,294,058	3,655,310	3,227,690		6,883,000	6,883,000
Switzerland	759,369	924,736	1,684,105	1,745,895	200,000	3,630,000	3,630,000
Other Countries	48,253	37,023	85,276			85,276	85,276
TOTAL: CHEESE ARTICLES	**53,205,479**	**34,695,164**	**87,900,643**	**22,764,145**	**24,921,000**	**135,585,788**	**135,585,788**
TOTAL: CHEESE & NON-CHEESE	**57,653,474**	**52,111,950**	**109,765,424**	**22,764,145**	**24,921,000**	**157,450,569**	**157,450,569**

[FR Doc. 2016–20248 Filed 8–25–16; 8:45 am]
BILLING CODE 3410–10–C

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Willamette National Forest, USDA Forest Service

ACTION: Notice of New Fee Site.

SUMMARY: The Willamette National Forest is proposing recreation fees at six recreation sites. The Willamette National Forest proposes a $5/day fee for the use of facilities at three day use sites: Hackleman Old Growth Grove, Hardesty Trailhead, and McCredie Picnic Area. Two campgrounds have proposed fees: Alder Springs Campground at $10/night and Indigo Springs Campground at $12/night. For overnight use of a backcountry shelter, the Willamette National Forest proposes a nightly fee of $80 during the summer season and a per person fee of $7/night during the winter season. Funds from recreation fees will be used for the continued operation and maintenance of determined upon further analysis and public comment.

DATES: Send any comments about these fee proposals by December 1, 2016 so comments can be compiled, analyzed and shared with a Recreation Resource Advisory Committee. Fees may be implemented May, 2017.

ADDRESSES: Tracy Beck, Forest Supervisor, Willamette National Forest, 3106 Pierce Parkway, Suite D, Springfield, OR, 97477

FOR FURTHER INFORMATION CONTACT: Matt Peterson, Recreation Program Manager, 541–225–6421 or email *WillametteRecFeeComments@fs.fed.us*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established.

This new fee proposal will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Mountain View Shelter will be available for overnight rental. The proposed fee differs by season: a nightly fee of $80.00 during the summer season and a per person fee of $7.00/night during the winter season. Backcountry shelter rentals offer a unique experience available for use during the spring, summer and fall season. In winter, the shelter is currently first come-first served yet often fills to capacity, causing visitors to ski or trek back to their vehicles. Reservations would enable visitors to plan ahead and know whether they will have a space in the shelter. The cabin offers views and a place for Nordic skiers to stay overnight or warm up during the day. Activities nearby include winter skiing, hiking and hunting. Access to the site in the winter is only by skis and by vehicle during the rest of the year. Fees will be used to maintain and operate the shelter.

Indigo Springs Campground is currently a free site, with three campsites. Each campsite has a fire ring, picnic table, with garbage service and a vault restroom on-site. This campground is surrounded by a stand of old growth Douglas-fir and is close to the Middle Fork Trail. The springs for which the camp was named is nearby and can be enjoyed by walking an easy, 500 foot round-trip loop trail. Interpretive signs explain the role of the nearby historic Oregon Central Military Wagon Road and the role of the bull trout in the regional watershed ecosystem. The proposed fee is $12.00/

Alder Springs Campground is currently a free site, with six campsites. The campground is co-located with the Linton Lake Trailhead, which has an existing $5/day recreation fee. Campers currently use many of the same amenities as day users plus have the added benefit of their campsite, yet do this for free. The proposed fee addresses this inequity and is $10.00 for overnight camping, with a $5.00/night extra vehicle fee. This small, rustic campground is surrounded by towering Douglas fir trees. It is located on historic McKenzie Pass Highway (Hwy 242) about 90 minutes east of Eugene and provides easy access into the Three Sisters Wilderness.

The Hardesty Trailhead is located on Highway 58, about 30 miles southeast of the Eugene/Springfield metropolitan area. It was redeveloped in 2014, adding a vault restroom, picnic tables, hitching posts, and interpretation. It is a low elevation trailhead, providing year-round access to the Hardesty Trail and the South Willamette Trail, which provide access to the Goodman Creek and Eula Ridge trails. These trails are very popular with hikers, mountain bikers, and equestrians.

McCredie Picnic Area is located on Highway 58, about 10 miles east of the Oakridge, OR. It was redeveloped in 2014, adding a vault restroom, picnic tables, and interpretation. With picnic areas in view of the Salt Creek and trails to the water's edge, the easily accessible site provides a pleasant stopping point for travelers along Highway 58.

Hackleman Old Growth Grove, located along Highway 20 about 39 miles east of Sweet Home, OR, has on-site interpretation, picnic tables, restrooms, and a fully accessible trail that travels through an old-growth grove of Douglas Fir trees.

The proposed fee for Hardesty Trailhead, McCredie Picnic Area, and Hackleman Old Growth Grove is $5/day. Recreation passes, such as the Northwest Forest Pass, would also be accepted. Fees would help maintain and operate these sites, including adding garbage service.

Dated: August 15, 2016.

Tracy Beck,

Willamette National Forest Supervisor.

[FR Doc. 2016–20291 Filed 8–25–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Inyo, Plumas, and Stanislaus National Forests; Mono, Inyo, Plumas, and Tuolumne Counties, California; Mammoth Base Land Exchange

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Inyo, Plumas, and Stanislaus National Forests intend to prepare and Environmental Impact Statement (EIS) to evaluate a proposed land exchange pursuant to section 206 of FLPMA, 43 U.S.C. 1716, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The proposed exchange includes the conveyance of approximately 1,317.5 acres of a non-Federal land owned by Mammoth Main Lodge Redevelopment LLC (MMLR) to the United States in exchange for 30.6 acres of Federal land in the Inyo National Forest. The non-Federal parcels are located in Mono, Inyo, Plumas and Tuolumne Counties. The Federal parcels are located in Mono County.

DATES: Comments concerning the scope of the analysis must be received 45 days from date of publication in the **Federal Register**. A public open house regarding this proposal will be held on September 8, 2016 (see the **SUPPLEMENTARY INFORMATION** section for further information on the open house).

ADDRESSES: Send written comments to: Edward Armenta, Forest Supervisor, c/o Janelle Walker, Winter Sports Specialist, Inyo National Forest, PO Box 148, Mammoth Lakes, CA 93546, FAX; (760) 924–5537 or by email to: *comments-pacificsouthwest-inyo@fs.fed.us* (please include "Mammoth Base Land Exchange EIS" in the subject line). Comments may also be submitted on the project Web site: *http://www.fs.fed.us/nepa/fs-usda-pop.html?project=30428.*

FOR FURTHER INFORMATION CONTACT: Additional information related to the proposed project can be obtained from the project Web site, *http://www.fs.fed.us/nepa/fs-usda-pop.html?project=30428,* or by contacting Janelle Walker, Winter Sports Specialist, Inyo National Forest. Ms. Walker can be reached by phone at (760) 924–5523 or by email at *janellelwalker@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose of the Land Exchange

(1) To acquire environmentally sensitive lands and an administrative site to better meet resource and other management goals of the National Forests as outlined in the respective Land and Resource Management Plans of the National Forests involved in this exchange; and

(2) To exchange developed lands in the National Forest that encumber adequate management by the United States Forest Service and would better serve the community and economic needs of the Town of Mammoth Lakes and Mono County in private ownership.

Proposed Action

The Proposed Action is to complete a land exchange pursuant to section 206 of FLPMA, 43 U.S.C. 1716. Under the Proposed Action, the United States would convey approximately 30.6 acres of NFS lands within the boundaries of the Inyo National Forest, and currently managed as part of a Ski Area Term Special Use Permit to MMLR. In exchange, MMLR would convey to the United States approximately 1,317.5 acres of privately owned lands ("inholdings") located within the boundaries of the Inyo, Plumas and Stanislaus National Forests and one small parcel (approximately 1.66 acres) in Inyo County, California that is outside the boundaries of the Inyo National Forest.

Federal Parcels

Under the Proposed Action, two Federal parcels located within the municipal boundary limits of the Town of Mammoth Lakes—totaling approximately 30.6 acres—would be transferred to MMLR. The Federal parcels include an intensely developed tract containing structures that provide lodging and visitor services facilities at the main base area for the Mammoth Mountain Ski Area, and an adjacent tract containing sewage ponds that receive and treat sewage from various Mammoth Mountain Ski Area facilities. The Federal parcels are located adjacent to California State Highway 203, approximately four miles west of the town center of Mammoth Lakes.

Non-Federal Parcels

Under the Proposed Action, 12 non-Federal parcels—totaling approximately 1,317.5 acres—would be transferred to the United States, to be managed by the United States Forest Service.

Six of the non-Federal parcels are located inside the boundaries of the Inyo National Forest. These parcels include the West Mono Lake Parcel (located inside the boundaries of the Congressionally designated Mono Basin National Forest Scenic Area near the west shore of Mono Lake), the Lundy Canyon Parcel (patented mining claims located in or adjacent to the Hoover Wilderness northwest of Mono Lake), the Moran Springs Parcel (located in the Benton Range), Dexter Canyon Parcel (a large inholding southeast of Mono Lake), Madden Parcel (adjacent to Lake Mary Road in the Town of Mammoth Lakes), and the Pine Creek Parcel (located at the trailhead of the Pine Canyon Trail).

The non-Federal parcel located outside the boundaries of the Inyo National Forest is located in Inyo County. The Los Angeles Department of Water and Power (DWP)-Bishop Parcel is located in the City of Bishop, California, adjacent to the White Mountain Ranger District Office of the Inyo National Forest.

One of the non-Federal parcels (Taylor Lake Parcel) is located inside the boundaries of the Plumas National Forest at Taylor Lake east of Greenville, California.

Four of the non-Federal parcels are located inside the boundaries of the Stanislaus National Forest in the Clavey River watershed near Yosemite National Park.

Additional information and maps of this proposal can be found on the project Web site: *http://www.fs.fed.us/nepa/fs-usda-pop.html?project=30428*

Responsible Official

The Responsible Official is Edward Armenta, Forest Supervisor for the Inyo National Forest.

Nature of Decision To Be Made

The decision to be made is whether to authorize the Proposed Action as described above, modify the Proposed Action to address issues raised in public scoping, or to take no action at this time.

Permits or Licenses Required

Forest Service Special Use Permit

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed projects. A public meeting will be held on September 8, 2016 to share information and answer questions about the project. The meeting will be held in the town of Mammoth Lakes at the Council Chambers (Suite Z—437 Old Mammoth Road) from 6 p.m. to 8 p.m.

This project will be subject to 36 CFR 254.8 Notice of Exchange Proposal. Individuals and entities who have submitted timely, specific written comments regarding a proposed project or activity during public comment periods, including this 45-day public scoping period, may file an objection (36 CFR 218.5(a)). Written comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection (36 CFR 218.25(b)(2)). For purposes of meeting the 36 CFR 218.5 eligibility requirements, the public scoping period will end 45 days from the date the Notice of Exchange Proposal is published in the **Federal Register**.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however those who only submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR 215.

Dated: August 18, 2016.

Edward E. Armenta,

Forest Supervisor, Inyo National Forest.

[FR Doc. 2016–20383 Filed 8–25–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan-Wenatchee National Forest; Okanogan, Chelan and Skagit Counties, Washington; Pack Stock Outfitter Guide Special Use Permits Supplemental Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a final environmental impact statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service will prepare a Supplemental Environmental Impact Statement (SEIS) to update and correct the Pack and Saddle Stock Outfitter-Guide Special Use Permit Issuance Final Environmental Impact Statement (FEIS). The Notice of Availability for the FEIS was published on March 8, 2013 (FR Vol. 78, No. 46, 15011). The Record of Decision for the FEIS was withdrawn in June 2013, after appeals were filed, and Regional Office review found portions of the analysis needed correction. The Supplemental Environmental Impact Statement will evaluate a modification of FEIS Alternative 4 and make other corrections to provide pack stock outfitter and guide services on the Methow Valley, Chelan and Tonasket Ranger Districts of the Okanogan-Wenatchee National Forest.

DATES: The draft supplemental environmental impact statement is expected in October 2016 and the final supplemental environmental impact statement is expected February 2017.

FOR FURTHER INFORMATION CONTACT: Jennifer Zbyszewski, Project Team Leader, Methow Valley Ranger District, Okanogan-Wenatchee National Forest, (509) 996–4021, *jzbysewski@fs.fed.us,* or Paul Willard, Recreation Program Manager, Chelan Ranger District, Okanogan-Wenatchee National Forest, (509)682–4960, *pwillard@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Scoping is not required for supplements to environmental impact statements [40 CFR 1502.9(c)(4)] and will not be conducted because of the limited nature of the additional analysis needed.

The SEIS will be modified based on a new 2016 Needs Assessment and Extent Necessary Determination; the 2012 Needs Assessment was revised to more accurately calculate the extent of commercial services necessary in wilderness. FEIS Alternative 4 was modified to reduce the service days available in the Pasayten Wilderness to 1,640, and in the Lake Chelan-Sawtooth to 737 based on the 2016 Needs Assessment. The SEIS will also supplement, clarify, and update other information in the FEIS.

The Responsible Official is Michael R. Williams, Forest Supervisor, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, WA 98801.

The Responsible Official will decide whether or not to issue term permits to the outfitters described in the proposed action presented in the FEIS and SEIS based on one or a combination of alternatives in the FEIS and/or SEIS. He will also decide what, if any, mitigation measures and monitoring are needed. The criteria that will be used to select among the alternatives are: (1) To what extent each alternative responds to applications for special use permits in a manner that provides stability to outfitter-guide businesses to allow financial commitments necessary to continue to provide public service; (2) the extent to which each alternative meets the minimum extent necessary for commercial services in Wilderness, to provide for wilderness appropriate activiteis, and protect wilderness character while providing pack and saddle stock outfitter-guide commercial services in the Pasayten and Lake Chelan-Sawtooth Wilderness areas; (3) the extent to which each alternative adesignates an amount of campsite barren core in wilderness used by the pack and saddle stock outfitter-guide that is compatible with party size, and (4) the effects of each alternative on the environment, particularly those aspects of the environment identified as Significant Issues.

In the final SEIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft SEIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Forest Supervisor for the Okanogan-Wenatchee National Forest will be the Federal responsible official for this SEIS. The new Record of Decision will be based on both the FEIS and SEIS, and the Forest Supervisor's decision will be subject to objection pursuant to 36 CFR 218.

Dated: August 19, 2016.

Michael R. Williams,

Forest Supervisor, Okanogan-Wenatchee National Forest.

[FR Doc. 2016–20487 Filed 8–25–16; 8:45 am]

BILLING CODE 3411–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) plans to hold its regular committee and Board meetings in Washington, DC, Monday through Wednesday, September 12—14, 2016 at the times and location listed below.

DATES: The schedule of events is as follows:

Monday, September 12, 2016
2:00 p.m.–3:00 p.m. Technical Programs Committee
3:00–4:00 Ad Hoc Committee on Design Guidance
Tuesday, September 13, 2016
9:30 a.m.–11:00 a.m. Ad Hoc Committee on Frontier Issues
11:00–11:30 Budget
11:30–Noon Planning and Evaluation
1:30 p.m.–2:30 p.m. Ad Hoc Committee on Medical Diagnostic Equipment: CLOSED
2:30–4:00 Ad Hoc Committee on Information and Communication Technology: CLOSED
Wednesday, September 14, 2016
1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: Meetings will be held at the Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact David Capozzi, Executive Director, (202) 272–0010 (voice); (202) 272–0054 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting scheduled on the afternoon of Wednesday, September 14, 2016, the Access Board will consider the following agenda items:

- Approval of the draft July 13, 2016 meeting minutes (vote)
- Ad Hoc Committee Reports: Design Guidance; Frontier Issues; Medical Diagnostic Equipment (vote) and Information and Communication Technology
- Technical Programs Committee
- Budget Committee
- Planning and Evaluation Committee
- Election Assistance Commission Report
- Executive Director's Report
- Public Comment (final 15 minutes of the meeting)

Members of the public can provide comments either in-person or over the telephone during the final 15 minutes of the Board meeting on Wednesday, September14, 2016. Any individual interested in providing comment is asked to pre-register by sending an email to *bunales@access-board.gov* with the subject line "Access Board meeting—Public Comment" with your name, organization, state, and topic of comment included in the body of your email. All emails to register for public comment must be received by Wednesday, September 7, 2016. Registered commenters will be provided with a call-in number and passcode before the meeting. Commenters will be called on in the order by which they pre-registered. Due to time constraints, each commenter is limited to two minutes. Commenters on the telephone will be in a listen-only capacity until they are called on.

All meetings are accessible to persons with disabilities. An assistive listening system, Communication Access Realtime Translation (CART), and sign language interpreters will be available at the Board meeting and committee meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/the-board/policies/fragrance-free-environment* for more information). You may view the Wednesday, September 14, 2016 meeting through a live webcast from 1:30 p.m. to 3:00 p.m. at: *www.access-board.gov/webcast.*

David M. Capozzi,

Executive Director.

[FR Doc. 2016–20470 Filed 8–25–16; 8:45 am]

BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: Effective on September 25, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/10/2016 (81 FR 37581–37582) and 7/1/2016 (81 FR 43191) the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

NSN(s)—Product Name(s): 6210–00–NIB–0006—Tube Light, LED, T8, Universal (Type A or B), 4100K, 2 Foot
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: Industries of the Blind, Inc., Greensboro, NC Central Association for the Blind & Visually Impaired, Utica, NY
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: B-List

NSN(s)—Product Name(s): 6515–01–529–1187—Nasal Trumpet
Mandatory for: 100% of the requirement of the Department of Defense
Mandatory Source(s) of Supply: Lighthouse Works, Orlando, FL
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: C-List

NSN(s)—Product Name(s)
5120–00–NIB–0163—Socket Set, Chrome, 1/4″ Drive Deep, Metric 6 Point Fasteners, 11 Pieces
5120–00–NIB–0164—Socket Set, Chrome, 1/4″ Drive Shallow, Metric 6 Point Fasteners, 11 Pieces
5120–01–429–3605—Socket Set, Chrome 3/8″ Drive Deep, Metric 6 Point Fasteners, 12 Pieces
5120–01–429–3550—Socket Set, Chrome, 1/2″ Drive Deep, Metric 12 Point Fasteners, 13 Pieces
5120–01–429–3569—Socket Set, Chrome, 1/2″ Drive Shallow, Metric 12 Point Fasteners, 13 Pieces
Mandatory for: Total Government Requirement
Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI
Contracting Activity: General Services Administration, Kansas City, MO
Distribution: B-List

Service

Service Type: Dormitory Support Service
Mandatory for: U.S. Air Force, Cannon Air Force Base (CAFB), Dormitory Campus, CAFB Fire Department, Base Confinement Area & Fire Department, Melrose AF Range, Cannon AFB, NM, 110 E Alison Avenue, Cannon AFB, NM
Mandatory Source(s) of Supply: ENMRSH, Inc., Clovis, NM
Contracting Activity: Dept of the Air Force, FA4855 27 SOCONS LGC

Deletions

On 7/15/2016 (81 FR 46061–46062) and 7/22/2016 (81 FR 47777–47778), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN(s)—Product Name(s)
7930–01–494–2985—Ecolab Omni-Pak, Floor Cleaner/Stripper, Heavy-Duty, Water Soluble, .5oz
7930–01–380–8404—EcoLab Water Soluble Cleaners/Detergents
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: GSA/FSS Greater Southwest Acquisition CTR (7FCO), Fort Worth, TX

NSN(s)—Product Name(s)
7930–01–600–5752—Starter Kit, Disinfectant Cleaner-Degreaser Cartridge Concentrate
7930–01–600–5749—Refills, Disinfectant Cleaner-Degreaser Cartridge Concentrate
Mandatory Source(s) of Supply: Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activities: General Services Administration, Fort Worth, TX, Department of Veterans Affairs, National Acquisition Center

NSN(s)—Product Name(s)
7930–01–380–8475—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 55 gal
Mandatory Source(s) of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: General Services Administration, Fort Worth, TX

NSN(s)—Product Name(s)
7930–01–380–8500—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 5 gal
7930–01–380–8350—Finish, Floor, Sealer, Non-buffing, High Gloss, Ready-to-Use, 1 gal
Mandatory for: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: General Services Administration, Fort Worth, TX

NSN(s)—Product Name(s)
7045–01–392–6514—Greendisk
Mandatory for: North Central Sight Services, Inc., Williamsport, PA
Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s)
6532–00–083–6534/Gown, Operating, Surgical
6532–00–083–6535—Gown, Operating, Surgical

6532–00–083–6356—Gown, Operating, Surgical
6532–00–104–9895—Gown, Hospital
Mandatory for: Unknown
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: Administrative/General Support Service
Mandatory For: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Administrative Support Service
Mandatory for: GSA, Greater Chicagoland Service Center, 230 S Dearborn St #3700, Chicago, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Janitorial/Custodial Service
Mandatory for: VA Primary Care Clinic, 3715 Municipal Dr., McHenry, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: Veterans Affairs, Department of, NAC
Service Type: Employment Placement Service
Mandatory for: Defense Logistics Agency, National Human Resource Offices, Fort Belvoir, VA
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: Defense Logistics Agency, DLA Support Services—DSS
Service Type: Administrative Service
Mandatory for: General Services Administration, 230 S. Dearborn Street, Public Building Service Property Development, Chicago, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Administrative/General Support Service
Mandatory for: GSA, Central Field Office, 536 S. Clark Street, Chicago, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Parts Machining Service
Mandatory for: Naval Supply Center (Bldg 467): Puget Sound, 467 W Street, Bremerton, WA
Mandatory Source(s) of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA
Contracting Activity: DOD/Department of the Navy

Service Type: Assembly, Kit Camouflage Supp. Service
Mandatory for: Department of the Army, Red River Army Depot, 469 Avenue L, Texarkana, TX
Mandatory Source(s) of Supply: Louisiana Association for the Blind, Shreveport, LA
Contracting Activity: Dept of the Army, W40M Northeregion Contract OFC

Service Type: Operation of Postal Service Center Service, Luke Air Force Base, 14185 Falcon St, Luke AFB, AZ
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Service Type: Switchboard Operation Service
Mandatory for: Cannon Air Force Base, Cannon AFB, NM
Mandatory Source(s) of Supply: ENMRSH, Inc., Clovis, NM
Contracting Activity: Dept of the Air Force, FA4855 27 SOCONS LGC

Service Type: Transportation/Vehicle Operation Service
Mandatory for: Brooks Air Force Base, Brooks AFB, TX
Mandatory Source(s) of Supply: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX
Contracting Activity: Dept of the Air Force, FA8901 311 ABG PKB

Service Type: Administrative/General Support Service
Mandatory for: Chaplain's Office, Great Lakes Naval Training Center, Great Lakes, IL
Mandatory Source(s) of Supply: The Chicago Lighthouse for People who are Blind or Visually Impaired, Chicago, IL
Contracting Activity: DOD/Department of the Navy

Service Type: Administrative Support Service
Mandatory for: GSA, Tampa Property Management Office, 501 E Polk Street, Tampa, FL
Mandatory Source(s) of Supply: Tampa Lighthouse for the Blind, Tampa, FL
Contracting Activity: General Services Administration, FPDS Agency Coordinator

Service Type: Storage & Distribution of Tape, Webbing
Mandatory for: Defense Supply Center Philadelphia, 2800 S 20th St, Philadelphia, PA
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: Defense Logistics Agency Troop Support

Service Type: Fabrication of Tool Box Liners Service
Mandatory for: Fleet and Industrial Supply Center: P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DOD/Department of the Navy

Service Type: Repair of Small Hand Tools Service
Mandatory for: Fleet and Industrial Supply Center: P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Tampa Lighthouse for the Blind, Tampa, FL
Contracting Activity: DOD/Department of the Navy

Service Type: Parts Machining Service
Mandatory for: Fleet and Industrial Supply Center, P.O. Box 97, Naval Air Station, Jacksonville, FL
Mandatory Source(s) of Supply: Arizona Industries for the Blind, Phoenix, AZ
Contracting Activity: DOD/Department of the Navy

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–20536 Filed 8–25–16; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes service previously furnished by such agencies.

DATES: *Comments Must Be Received on or Before:* 9/25/2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

NSN(s)—Product Name(s):

8465–01–608–7503—Bag, Sleeping, Outer, Extreme Cold Weather (ECW OSB) U.S. Marine Corps, Regular
8465–01–623–2346—Bag, Sleeping, Outer, Extreme Cold Weather (ECW OSB) U.S. Marine Corps, Extra Long
Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX
Mandatory Purchase For: 100% of the requirements of Department of Defense
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: C-List

Product Name(s)—NSN(s):

8465–01–608–7507—Sack, Extreme Cold Weather Compression Stuff Sack, (ECW CSS) U.S. Marine Corps, One size fits all
Mandatory Source(s) of Supply: The Lighthouse for the Blind, Inc., Seattle, WA
Mandatory Purchase For: 50% of the requirement of the Department of Defense
Contracting Activity: Defense Logistics Agency Troop Support
Distribution: C-List

Deletions

The following products and services are proposed for deletion from the Procurement List:

Products

NSN(s)—Product Name(s)

8405–01–540–1280—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL X–SHORT
8405–01–540–1318—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL SHORT
8405–01–540–1328—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL REGULAR
8405–01–540–1339—Trousers, NWU, Men's, Blue Digital Camouflage, X–SMALL LONG
8405–01–540–1350—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–SHORT
8405–01–540–1356—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL SHORT
8405–01–540–1363—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL REGULAR
8405–01–540–1375—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL X–LONG
8405–01–540–1430—Trousers, NWU, Men's, Blue Digital Camouflage, SMALL LONG
8405–01–540–1464—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE XX–LONG
8405–01–540–1475—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE XX–LONG
8405–01–540–1436—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–SHORT
8405–01–540–1467—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE SHORT:
8405–01–540–1471—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE REGULAR
8405–01–540–1446—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM SHORT
8405–01–540–1447—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM REGULAR
8405–01–540–1450—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM LONG
8405–01–540–1451—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM X–LONG
8405–01–540–1472—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE LONG
8405–01–540–1473—Trousers, NWU, Men's, Blue Digital Camouflage, X–LARGE X–LONG
8405–01–540–1455—Trousers, NWU, Men's, Blue Digital Camouflage, MEDIUM XX–LONG
8405–01–540–1496—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE REGULAR
8405–01–540–1508—Trousers, NWU, Men's, Blue Digital Camouflage, XX–LARGE XX–LONG
8405–01–540–1458—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE SHORT
8405–01–540–1459—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE REGULAR
8405–01–540–1461—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE LONG
8405–01–540–1462—Trousers, NWU, Men's, Blue Digital Camouflage, LARGE X–LONG
8405–01–540–1501—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large Long
8405–01–540–1506—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large X–Long
Mandatory Source(s) of Supply: Goodwill Industries of South Florida, Inc., Miami, FL
Contracting Activity: Defense Logistics Agency Troop Support
8405–01–573–8838—Trousers, NWU, Men's, Type II, Desert, X Large Regular
8405–01–573–8898—Trousers, NWU, Men's, Type II, Desert, X Large Long
8405–01–574–6613—Trousers, NWU, Men's, Type III, Woodland, Small Short
8405–01–574–6616—Trousers, NWU, Men's, Type III, Woodland, Small Regular
8405–01–590–7676—Trousers, NWU, Women's, Type II, Desert, 29 X Short
8405–01–590–7835—Trousers, NWU, Women's, Type III, Woodland, 37 Short
8405–01–573–8152—Trousers, NWU, Men's, Type II, Desert, X Small Short
8405–01–573–8399—Trousers, NWU, Men's, Type II, Desert, Medium Regular
8405–01–573–8370—Trousers, NWU, Men's, Type II, Desert, Medium Short
8405–01–573–8362—Trousers, NWU, Men's, Type II, Desert, Medium X Short
8405–01–573–8350—Trousers, NWU, Men's, Type II, Desert, Small Long
8405–01–573–8253—Trousers, NWU, Men's, Type II, Desert, Small X Long
8405–01–573–8244—Trousers, NWU, Men's, Type II, Desert, Small Regular
8405–01–573–8239—Trousers, NWU, Men's, Type II, Desert, Small Short
8405–01–573–8226—Trousers, NWU, Men's, Type II, Desert, Small X Short
8405–01–573–8216—Trousers, NWU, Men's, Type II, Desert, X Small Long
8405–01–573–8170—Trousers, NWU, Men's, Type II, Desert, X Small Regular
8405–01–573–8831—Trousers, NWU, Men's, Type II, Desert, X Large Short
8405–01–573–8443—Trousers, NWU, Men's, Type II, Desert, Large XX Long
8405–01–573–8439—Trousers, NWU, Men's, Type II, Desert, Large X Long
8405–01–573–8432—Trousers, NWU, Men's, Type II, Desert, Large Long
8405–01–573–8426—Trousers, NWU, Men's, Type II, Desert, Large Regular
8405–01–573–8421—Trousers, NWU, Men's, Type II, Desert, Large Short
8405–01–573–8417—Trousers, NWU, Men's, Type II, Desert, Medium XX Long
8405–01–573–8410—Trousers, NWU, Men's, Type II, Desert, Medium X Long
8405–01–573–8404—Trousers, NWU, Men's, Type II, Desert, Medium Long
8405–01–573–9066—Trousers, NWU, Men's, Type II, Desert, XX Large XX Long
8405–01–573–9065—Trousers, NWU, Men's, Type II, Desert, XX Large X Long
8405–01–573–9016—Trousers, NWU, Men's, Type II, Desert, XX Large Long
8405–01–573–9005—Trousers, NWU, Men's, Type II, Desert, XX Large Regular
8405–01–573–8987—Trousers, NWU, Men's, Type II, Desert, X Large XX Long
8405–01–573–8924—Trousers, NWU, Men's, Type II, Desert, X Large X Long
8405–01–573–7890—Trousers, NWU, Men's, Type II, Desert, X Small X Short
8405–01–574–6864—Trousers, NWU, Men's, Type III, Woodland, Medium Regular
8405–01–574–6879—Trousers, NWU, Men's, Type III, Woodland, Medium X Long
8405–01–574–6934—Trousers, NWU, Men's, Type III, Woodland, Large Short
8405–01–574–6948—Trousers, NWU, Men's, Type III, Woodland, Large Long
8405–01–574–7294—Trousers, NWU, Men's, Type III, Woodland, Large XX Long
8405–01–574–7747—Trousers, NWU, Men's, Type III, Woodland, X Large Regular
8405–01–574–8158—Trousers, NWU, Men's, Type III, Woodland, X Large XX Long
8405–01–574–8175—Trousers, NWU, Men's, Type III, Woodland, XX Large Long
8405–01–574–8189—Trousers, NWU, Men's, Type III, Woodland, XX Large XX Long
8405–01–574–6039—Trousers, NWU, Men's, Type III, Woodland, X Small X Short
8405–01–574–6047—Trousers, NWU, Men's, Type III, Woodland, X Small Short
8405–01–574–6588—Trousers, NWU, Men's, Type III, Woodland, X Small Regular
8405–01–574–6593—Trousers, NWU, Men's, Type III, Woodland, X Small Long
8405–01–574–6605—Trousers, NWU, Men's, Type III, Woodland, Small X Short
8405–01–574–6720—Trousers, NWU, Men's, Type III, Woodland, Small X Long
8405–01–574–6836—Trousers, NWU, Men's, Type III, Woodland, Small Long
8405–01–574–6841—Trousers, NWU, Men's, Type III, Woodland, Medium X Short
8405–01–574–6852—Trousers, NWU, Men's,

Type III, Woodland, Medium Short
8405–01–574–6868—Trousers, NWU, Men's, Type III, Woodland, Medium Long
8405–01–574–6896—Trousers, NWU, Men's, Type III, Woodland, Medium XX Long
8405–01–574–6944—Trousers, NWU, Men's, Type III, Woodland, Large Regular
8405–01–574–7016—Trousers, NWU, Men's, Type III, Woodland, Large X Long
8405–01–574–7301—Trousers, NWU, Men's, Type III, Woodland, X Large Short
8405–01–574–7750—Trousers, NWU, Men's, Type III, Woodland, X Large Long
8405–01–574–7764—Trousers, NWU, Men's, Type III, Woodland, X Large X Long
8405–01–574–8168—Trousers, NWU, Men's, Type III, Woodland, XX Large Regular
8405–01–574–8184—Trousers, NWU, Men's, Type III, Woodland, XX Large X Long
8405–01–590–7671—Trousers, NWU, Women's, Type II, Desert, 25 X Short
8405–01–590–7672—Trousers, NWU, Women's, Type II, Desert, 25 Short
8405–01–590–7679—Trousers, NWU, Women's, Type II, Desert, 29 Short
8405–01–590–7681—Trousers, NWU, Women's, Type II, Desert, 29 Regular
8405–01–590–7682—Trousers, NWU, Women's, Type II, Desert, 33 X Short
8405–01–590–7699—Trousers, NWU, Women's, Type II, Desert, 33 Short
8405–01–590–7726—Trousers, NWU, Women's, Type II, Desert, 33 Regular
8405–01–590–7747—Trousers, NWU, Women's, Type II, Desert, 37 Short
8405–01–590–7755—Trousers, NWU, Women's, Type II, Desert, 37 Regular
8405–01–590–7795—Trousers, NWU, Women's, Type III, Woodland, 29 X Short
8405–01–590–7771—Trousers, NWU, Women's, Type III, Woodland, 25 X Short
8405–01–590–7775—Trousers, NWU, Women's, Type III, Woodland, 25 Short
8405–01–590–7811—Trousers, NWU, Women's, Type III, Woodland, 29 Short
8405–01–590–7822—Trousers, NWU, Women's, Type III, Woodland, 33 X Short
8405–01–590–7819—Trousers, NWU, Women's, Type III, Woodland, 29 Regular
8405–01–590–7827—Trousers, NWU, Women's, Type III, Woodland, 33 Short
8405–01–590–7832—Trousers, NWU, Women's, Type III, Woodland, 33 Regular
8405–01–590–7837—Trousers, NWU, Women's, Type III, Woodland, 37 Regular

Mandatory Source(s) of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Defense Logistics Agency Troop Support

8405–01–540–1554—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Regular
8405–01–540–1532—Trousers, NWU, Women's, Blue Digital Camouflage, 33 X–Short
8405–01–540–1549—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Short
8405–01–540–1544—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Regular
8405–01–540–1511—Trousers, NWU, Women's, Blue Digital Camouflage, 25 X–Short
8405–01–540–1513—Trousers, NWU, Women's, Blue Digital Camouflage, 25 Short
8405–01–540–1540—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Short
8405–01–540–1527—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Regular
8405–01–540–1522—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Short
8405–01–540–1521—Trousers, NWU, Women's, Blue Digital Camouflage, 29 X–Short

Mandatory Source(s) of Supply: Goodwill Industries of South Florida, Inc., Miami, FL

Contracting Activity: Defense Logistics Agency Troop Support

8405–01–540–1280—Trousers, NWU, Men's, Blue Digital Camouflage, X–Small X–Short
8405–01–540–1318—Trousers, NWU, Men's, Blue Digital Camouflage, X–Small Short
8405–01–540–1328—Trousers, NWU, Men's, Blue Digital Camouflage, X–Small Regular
8405–01–540–1339—Trousers, NWU, Men's, Blue Digital Camouflage, X–Small Long
8405–01–540–1350—Trousers, NWU, Men's, Blue Digital Camouflage, Small X–Short
8405–01–540–1356—Trousers, NWU, Men's, Blue Digital Camouflage, Small Short
8405–01–540–1363—Trousers, NWU, Men's, Blue Digital Camouflage, Small Regular
8405–01–540–1375—Trousers, NWU, Men's, Blue Digital Camouflage, Small X–Long
8405–01–540–1430—Trousers, NWU, Men's, Blue Digital Camouflage, Small Long
8405–01–540–1464—Trousers, NWU, Men's, Blue Digital Camouflage, Large XX–Long
8405–01–540–1475—Trousers, NWU, Men's, Blue Digital Camouflage, X–Large XX–Long
8405–01–540–1436—Trousers, NWU, Men's, Blue Digital Camouflage, Medium X–Short
8405–01–540–1467—Trousers, NWU, Men's, Blue Digital Camouflage, X–Large Short
8405–01–540–1471—Trousers, NWU, Men's, Blue Digital Camouflage, X–Large Regular
8405–01–540–1446—Trousers, NWU, Men's, Blue Digital Camouflage, Medium Short
8405–01–540–1447—Trousers, NWU, Men's, Blue Digital Camouflage, Medium Regular
8405–01–540–1450—Trousers, NWU, Men's, Blue Digital Camouflage, Medium Long
8405–01–540–1451—Trousers, NWU, Men's, Blue Digital Camouflage, Medium X–Long
8405–01–540–1472—Trousers, NWU, Men's, Blue Digital Camouflage, X–Large Long
8405–01–540–1473—Trousers, NWU, Men's, Blue Digital Camouflage, X–Large X–Long
8405–01–540–1455—Trousers, NWU, Men's, Blue Digital Camouflage, Medium XX–Long
8405–01–540–1496—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large Regular
8405–01–540–1508—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large XX–Long
8405–01–540–1458—Trousers, NWU, Men's, Blue Digital Camouflage, Large Short
8405–01–540–1459—Trousers, NWU, Men's, Blue Digital Camouflage, Large Regular
8405–01–540–1461—Trousers, NWU, Men's, Blue Digital Camouflage, Large Long
8405–01–540–1462—Trousers, NWU, Men's, Blue Digital Camouflage, Large X–Long
8405–01–540–1501—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large Long
8405–01–540–1506—Trousers, NWU, Men's, Blue Digital Camouflage, XX–Large X–Long

Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX

Contracting Activity: Defense Logistics Agency Troop Support

8405–01–573–8838—Trousers, NWU, Men's, Type II, Desert, X Large Regular
8405–01–573–8898—Trousers, NWU, Men's, Type II, Desert, X Large Long
8405–01–574–6613—Trousers, NWU, Men's, Type III, Woodland, Small Short
8405–01–574–6616—Trousers, NWU, Men's, Type III, Woodland, Small Regular
8405–01–590–7676—Trousers, NWU, Women's, Type II, Desert, 29 X Short
8405–01–590–7835—Trousers, NWU, Women's, Type III, Woodland, 37 Short
8405–01–573–8152—Trousers, NWU, Men's, Type II, Desert, X Small Short
8405–01–573–8399—Trousers, NWU, Men's, Type II, Desert, Medium Regular
8405–01–573–8370—Trousers, NWU, Men's, Type II, Desert, Medium Short
8405–01–573–8362—Trousers, NWU, Men's, Type II, Desert, Medium X Short
8405–01–573–8350—Trousers, NWU, Men's, Type II, Desert, Small Long
8405–01–573–8253—Trousers, NWU, Men's, Type II, Desert, Small X Long
8405–01–573–8244—Trousers, NWU, Men's, Type II, Desert, Small Regular
8405–01–573–8239—Trousers, NWU, Men's, Type II, Desert, Small Short
8405–01–573–8226—Trousers, NWU, Men's, Type II, Desert, Small X Short
8405–01–573–8216—Trousers, NWU, Men's, Type II, Desert, X Small Long
8405–01–573–8170—Trousers, NWU, Men's, Type II, Desert, X Small Regular
8405–01–573–8831—Trousers, NWU, Men's, Type II, Desert, X Large Short
8405–01–573–8443—Trousers, NWU, Men's, Type II, Desert, Large XX Long
8405–01–573–8439—Trousers, NWU, Men's, Type II, Desert, Large X Long
8405–01–573–8432—Trousers, NWU, Men's, Type II, Desert, Large Long
8405–01–573–8426—Trousers, NWU, Men's, Type II, Desert, Large Regular
8405–01–573–8421—Trousers, NWU, Men's, Type II, Desert, Large Short
8405–01–573–8417—Trousers, NWU, Men's, Type II, Desert, Medium XX Long
8405–01–573–8410—Trousers, NWU, Men's, Type II, Desert, Medium X Long
8405–01–573–8404—Trousers, NWU, Men's, Type II, Desert, Medium Long
8405–01–573–9066—Trousers, NWU, Men's,

Type II, Desert, XX Large XX Long
8405–01–573–9065—Trousers, NWU, Men's, Type II, Desert, XX Large X Long
8405–01–573–9016—Trousers, NWU, Men's, Type II, Desert, XX Large Long
8405–01–573–9005—Trousers, NWU, Men's, Type II, Desert, XX Large Regular
8405–01–573–8987—Trousers, NWU, Men's, Type II, Desert, X Large XX Long
8405–01–573–8924—Trousers, NWU, Men's, Type II, Desert, X Large X Long
8405–01–573–7890—Trousers, NWU, Men's, Type II, Desert, X Small X Short
8405–01–574–6864—Trousers, NWU, Men's, Type III, Woodland, Medium Regular
8405–01–574–6879—Trousers, NWU, Men's, Type III, Woodland, Medium X Long
8405–01–574–6934—Trousers, NWU, Men's, Type III, Woodland, Large Short
8405–01–574–6948—Trousers, NWU, Men's, Type III, Woodland, Large Long
8405–01–574–7294—Trousers, NWU, Men's, Type III, Woodland, Large XX Long
8405–01–574–7747—Trousers, NWU, Men's, Type III, Woodland, X Large Regular
8405–01–574–8158—Trousers, NWU, Men's, Type III, Woodland, X Large XX Long
8405–01–574–8175—Trousers, NWU, Men's, Type III, Woodland, XX Large Long
8405–01–574–8189—Trousers, NWU, Men's, Type III, Woodland, XX Large XX Long
8405–01–574–6039—Trousers, NWU, Men's, Type III, Woodland, X Small X Short
8405–01–574–6047—Trousers, NWU, Men's, Type III, Woodland, X Small Short
8405–01–574–6588—Trousers, NWU, Men's, Type III, Woodland, X Small Regular
8405–01–574–6593—Trousers, NWU, Men's, Type III, Woodland, X Small Long
8405–01–574–6605—Trousers, NWU, Men's, Type III, Woodland, Small X Short
8405–01–574–6720—Trousers, NWU, Men's, Type III, Woodland, Small X Long
8405–01–574–6836—Trousers, NWU, Men's, Type III, Woodland, Small Long
8405–01–574–6841—Trousers, NWU, Men's, Type III, Woodland, Medium X Short
8405–01–574–6852—Trousers, NWU, Men's, Type III, Woodland, Medium Short
8405–01–574–6868—Trousers, NWU, Men's, Type III, Woodland, Medium Long
8405–01–574–6896—Trousers, NWU, Men's, Type III, Woodland, Medium XX Long
8405–01–574–6944—Trousers, NWU, Men's, Type III, Woodland, Large Regular
8405–01–574–7016—Trousers, NWU, Men's, Type III, Woodland, Large X Long
8405–01–574–7301—Trousers, NWU, Men's, Type III, Woodland, X Large Short
8405–01–574–7750—Trousers, NWU, Men's, Type III, Woodland, X Large Long
8405–01–574–7764—Trousers, NWU, Men's, Type III, Woodland, X Large X Long
8405–01–574–8168—Trousers, NWU, Men's, Type III, Woodland, XX Large Regular
8405–01–574–8184—Trousers, NWU, Men's, Type III, Woodland, XX Large X Long
8405–01–590–7671—Trousers, NWU, Women's, Type II, Desert, 25 X Short
8405–01–590–7672—Trousers, NWU, Women's, Type II, Desert, 25 Short
8405–01–590–7679—Trousers, NWU, Women's, Type II, Desert, 29 Short
8405–01–590–7681—Trousers, NWU, Women's, Type II, Desert, 29 Regular
8405–01–590–7682—Trousers, NWU, Women's, Type II, Desert, 33 X Short
8405–01–590–7699—Trousers, NWU, Women's, Type II, Desert, 33 Short
8405–01–590–7726—Trousers, NWU, Women's, Type II, Desert, 33 Regular
8405–01–590–7747—Trousers, NWU, Women's, Type II, Desert, 37 Short
8405–01–590–7755—Trousers, NWU, Women's, Type II, Desert, 37 Regular
8405–01–590–7795—Trousers, NWU, Women's, Type III, Woodland, 29 X Short
8405–01–590–7771—Trousers, NWU, Women's, Type III, Woodland, 25 X Short
8405–01–590–7775—Trousers, NWU, Women's, Type III, Woodland, 25 Short
8405–01–590–7811—Trousers, NWU, Women's, Type III, Woodland, 29 Short
8405–01–590–7822—Trousers, NWU, Women's, Type III, Woodland, 33 X Short
8405–01–590–7819—Trousers, NWU, Women's, Type III, Woodland, 29 Regular
8405–01–590–7827—Trousers, NWU, Women's, Type III, Woodland, 33 Short
8405–01–590–7832—Trousers, NWU, Women's, Type III, Woodland, 33 Regular
8405–01–590–7837—Trousers, NWU, Women's, Type III, Woodland, 37 Regular
Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: Defense Logistics Agency Troop Support

8405–01–540–1554—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Regular
8405–01–540–1532—Trousers, NWU, Women's, Blue Digital Camouflage, 33 X–Short
8405–01–540–1549—Trousers, NWU, Women's, Blue Digital Camouflage, 37 Short
8405–01–540–1544—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Regular
8405–01–540–1511—Trousers, NWU, Women's, Blue Digital Camouflage, 25 X–Short
8405–01–540–1513—Trousers, NWU, Women's, Blue Digital Camouflage, 25 Short
8405–01–540–1540—Trousers, NWU, Women's, Blue Digital Camouflage, 33 Short
8405–01–540–1527—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Regular
8405–01–540–1522—Trousers, NWU, Women's, Blue Digital Camouflage, 29 Short
8405–01–540–1521—Trousers, NWU, Women's, Blue Digital Camouflage, 29 X–Short
Mandatory Source(s) of Supply: ReadyOne Industries, Inc., El Paso, TX
Contracting Activity: Defense Logistics Agency Troop Support

Services

Service Type: CD–ROM Replication—Program 5588–S Service
Mandatory for: Government Printing Office, US Government Publishing Office, Columbus, OH
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: CD–ROM Replication—Program A890–M Service
Mandatory for: Government Printing Office, 710 North Capitol & H Street NW., Washington, DC
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: CD–ROM Replication—Program 2239S Service
Mandatory for: Government Printing Office, Philadelphia Regional Printing Procurement Office, Southhampton, PA
Mandatory Source(s) of Supply: Association for the Blind and Visually Impaired—Goodwill Industries of Greater Rochester, Rochester, NY
Contracting Activity: Government Printing Office
Service Type: Administrative/General Support Service
Mandatory for: GSA, Southwest Supply Center, 819 Taylor Street, Fort Worth, TX
Mandatory Source(s) of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX; Tarrant County Association for the Blind, Fort Worth, TX; East Texas Lighthouse for the Blind, Tyler, TX
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Employment Placement Service
Mandatory for: Defense Logistics Agency: National Human Resource Offices (HRO), Locations—Columbus, OH; Richmond, VA; Battle Creek, MI; Philadelphia, PA; New Cumberland, PA; Fort Belvoir, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Defense Logistics Agency Troop Support
Service Type: Administrative/General Support Service
Mandatory for: GSA, Northeast Distribution Center: Federal Supply Service (3FS), Federal Supply Service (3FS) Burlington, NJ
Mandatory Source(s) of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Mattress Resizing Service
Mandatory for: Defense Supply Center Philadelphia, Philadelphia, PA
Mandatory Source(s) of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Defense Logistics Agency Troop Support
Service Type: Mailroom Operation Service
Mandatory for: McCoy Federal Building, 100 W Capitol St, Jackson, MS

Mandatory Source(s) of Supply: Mississippi Industries for the Blind, Jackson, MS
Contracting Activity: Department of Housing and Urban Development
Service Type: Order Processing Service
Mandatory for: National Institute of Health, 31 Center Dr, Bethesda, MD
Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: Health and Human Services, Department of, Dept of HHS
Service Type: Data Entry/Data Base Management Service
Mandatory for: GSA, Washington: Federal Supply Service Bureau, L'Enfant Plaza, Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Mailroom Operation Service
Mandatory for: Department of Housing and Urban Development, 600 E Broad St, Richmond, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Health and Human Services, Department of, Dept of HHS
Service Type: Administrative Service
Mandatory for: GSA, Federal Supply Service Bureau: Service Acquisition Center, 1941 Jefferson Davis Highway, Arlington, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Administrative Service
Mandatory for: GSA, Federal Supply Service Bureau: Fleet Management Division, 200 Independence Ave. SW., Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: General Services Administration, FPDS Agency Coordinator
Service Type: Customer Service Representatives Service
Mandatory for: GSA, Springfield: Customer Supply and Industrial Products Center, GSA Franconia Bldg. A, Springfield, VA
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: GENERAL SERVICES ADMINISTRATION, FPDS AGENCY COORDINATOR
Service Type: Storage, Handling & Distribution of CLI Promotional Service
Mandatory for: Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC
Mandatory Source(s) of Supply: Virginia Industries for the Blind, Charlottesville, VA
Contracting Activity: Environmental Protection Agency, U.S. Environmental Protection Agency
Service Type: Food Service Attendants Service
Mandatory for: CRTC Dining Facility, 1401 Robert B. Miller Jr. Drive, Garden City, GA
Mandatory Source(s) of Supply: Trace, Inc., Boise, ID
Contracting Activity: Dept of the Air Force, FA6643 AF Reserve CMD HQ AFRC PK

The Commission is publishing a correction to its Notice published in the **Federal Register** on Friday, August 19, 2015 as follows. The correction adds an additional mandatory source of supply, Peckham Vocational Industries, Inc., Lansing, MI, but does not change the date published for public comments to be submitted to the U.S. AbilityOne Commission.

NSN(s)—Product Name(s)

8465–00–NIB–0263—Airborne Rucksack, Modular Lightweight Load-Carrying Equipment (MOLLE), OCP2015
Mandatory Source(s) of Supply: Winston Salem Industries for the Blind, Inc. Winston-Salem, NC
Peckham Vocational Industries, Inc., Lansing, MI
Mandatory Purchase For: 100% of the requirement of the U.S. Army
Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division
Distribution: C-List

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–20535 Filed 8–25–16; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Patents

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7 (a)(1)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. Patent 9,193,739, issued November 24, 2015, entitled, "Induction of highly specific antibodies to a hapten but not to a carrier peptide by immunization" and an exclusive within a field of use, royalty-bearing, revocable license to Patent Cooperation Treaty application PCT/US/2014/045940, filed July 9, 2014, entitled, "Methods for Enhancing the Immunostimulation Potency of Aluminum Salt-adsorbed Vaccines" to Opiant Pharmaceuticals, Inc., having its principal place of business at 401 Wilshire Blvd., 12th Floor, Santa Monica, CA 90401.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Mr. Barry Datlof, Office of Research & Technology Assessment, (301) 619–0033. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,
Army Federal Register Liaison Officer.

[FR Doc. 2016–20489 Filed 8–25–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Subcommittee Meeting Notice

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Subcommittee meeting.

SUMMARY: The Department of the Army is publishing this notice to announce the following Federal advisory committee meeting of the U.S. Army War College Board of Visitors, a subcommittee of the Army Education Advisory Committee. This meeting is open to the public.

DATES: The U.S. Army War College Board of Visitors Subcommittee will meet from 8:15 a.m. to 1:45 p.m. on October 14, 2016.

ADDRESSES: U.S. Army War College, 122 Forbes Avenue, Carlisle, PA, Command Conference Room, Root Hall, Carlisle Barracks, PA 17013.

FOR FURTHER INFORMATION CONTACT: Dr. G.K. Cunningham, the Alternate Designated Federal Officer for the subcommittee, in writing at Office of the Provost, 122 Forbes Ave., Carlisle, PA 17013, by email at *glenn.k.cunningham.civ@mail.mil,* or by telephone at (717) 245–3356.

SUPPLEMENTARY INFORMATION: The subcommittee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of

1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide the subcommittee with an overview of the U.S. Army War College Academic Campaign Plan and the annual year 17 curriculum, discuss Middle States and JPME II accreditation matters, and address other administrative matters.

Proposed Agenda: The subcommittee will review and evaluate information related to the continued academic growth, accreditation, and development of the U.S. Army War College. General deliberations leading to provisional findings will be referred to the Army Education Advisory Committee for deliberation by the Committee under the open-meeting rules.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their, name, affiliation, and daytime phone number seven business days prior to the meeting to Dr. G.K. Cunningham, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public attending the subcommittee meetings will not be permitted to present questions from the floor or speak to any issue under consideration by the subcommittee.

Because the meeting of the subcommittee will be held in a Federal Government facility on a military base, security screening is required. A photo ID is required to enter base. Please note that security and gate guards have the right to inspect vehicles and persons seeing to enter and exit the installation. Root Hall is fully handicap accessible. Wheelchair access is available in front at the main entrance of the building. For additional information about public access procedures, contact Dr. G.K Cunningham, the subcommittee's Alternate Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the subcommittee, in response to the stated agenda of the open meeting or in regard to the subcommittee's mission in general. Written comments or statements should be submitted to Dr. G.K. Cunningham, the subcommittee Alternate Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. The Alternate Designated Federal Official will review all submitted written comments or statements and provide them to members of the subcommittee for their consideration. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Alternate Designated Federal Official at least seven business days prior to the meeting to be considered by the subcommittee. Written comments or statements received after this date may not be provided to the subcommittee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow a member of the public to speak or otherwise address the Committee during the meeting. Members of the public will be permitted to make verbal comments during the Committee meeting only at the time and in the manner described below. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least seven business days in advance to the subcommittee's Alternate Designated Federal Official, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. The Alternate Designated Federal Official will log each request, in the order received, and in consultation with the Subcommittee Chair, determine whether the subject matter of each comment is relevant to the Subcommittee's mission and/or the topics to be addressed in this public meeting. A 15-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described above, will be allotted no more than three minutes during the period, and will be invited to speak in the order in which their requests were received by the Alternate Designated Federal Official.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–20490 Filed 8–25–16; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091]; [Docket 2016–0053; Sequence 26]

Submission for OMB Review; Anti-Kickback Procedures

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning anti-kickback procedures. A notice was published in the **Federal Register** at 81 FR 31239 on May 18, 2016. No comments were received.

DATES: Submit comments on or before September 26, 2016.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503. Additionally submit a copy to GSA by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0091, Anti-Kickback Procedures". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0091, Anti-Kickback Procedures" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405–0001. ATTN: Ms. Flowers/IC 9000–0091, Anti-Kickback Procedures.

Instructions: Please submit comments only and cite Information Collection 9000–0091, Anti-Kickback Procedures, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, 202–219–0202 or email *cecelia.davis@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of 41 U.S.C. chapter 87, Kickbacks. Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of the statute may have occurred, they are required to report the possible violation in writing to the contracting agency inspector general, the head of the contracting agency if an agency does not have an inspector general, or the Department of Justice. The information is used to determine if any violations of the statute have occurred.

There is no Governmentwide data collection process or system which identifies the number of alleged violations of 41 U.S.C. chapter 87, Kickbacks that are reported annually to agency inspectors general, the heads of the contracting agency if an agency does not have an inspector general, or the Department of Justice.

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 1.
Annual Responses: 100.
Hours per Response: 20.
Total Burden Hours: 2,000.
Affected Public: Businesses or other for-profit and not-for-profit institutions.
Frequency: On occasion.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: August 22, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–20431 Filed 8–25–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement and To Announce Public Scoping Meetings for the Fallon Range Training Complex Modernization: Expansion of Land Ranges, Airspace Modifications, and Public Land Withdrawal Renewal

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to assess the potential environmental consequences of maintaining and modernizing the Fallon Range Training Complex (FRTC) in Nevada, which would include land range expansion through additional land withdrawal and land acquisition, airspace modifications, and public land withdrawal renewal. The Navy's action proponent for this proposal is Commander, United States Pacific Fleet (PACFLT). The Bureau of Land Management, the Federal Aviation Administration, and the United States Fish and Wildlife Service will participate as cooperating agencies in the preparation of the EIS.

DATES AND ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for public scoping meeting dates, times, and addresses.

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command Southwest; Attention: Amy P. Kelley, Code EV21.AK; 1220 Pacific Highway; Building 1, 5th Floor; San Diego, California 92132.

SUPPLEMENTARY INFORMATION: Since the initial operation of Naval Air Station Fallon in the 1940s and the formal establishment of the FRTC in 1977, the ranges and airspace of the FRTC have been extensively used by the DoN and other Services to conduct air warfare and ground training, including live-fire training activities. The FRTC is the DoN's premier integrated strike warfare training complex, supporting combat elements of PACFLT, United State (U.S.) Fleet Forces Command, U.S. Marine Corps, Naval Special Warfare Command, and others. It is located in the high desert of northern Nevada, 65 miles east of the city of Reno, Nevada, and is comprised of: Special Use Airspace (SUA), including restricted areas, Military Operations Areas (MOAs), and Air Traffic Control Assigned Airspace (ATCAAs); land training ranges; fixed and mobile land targets, and control facilities; threat electronic warfare, early warning radars, and surface-to-air missile systems; and instrumentation facilities.

The current FRTC bombing ranges (B–16, B–17, B–19, and B–20) have not changed substantially in size or configuration since the 1990s. However, warfare technology, to include dynamic improvements to stand-off weapons, platform sensors, threat systems, and strike tactics, and the accuracy of applications that produce and manage safety footprints for air-to-ground weapons training, have continued to evolve. In response to these changes, and to formalize FRTC training requirements, the Naval Aviation Warfighting Development Center (the DoN's primary authority on naval aviation training and tactics development), together with subject matter training experts from the Naval Special Warfare Command, conducted a training capabilities study. This study analyzed the capabilities that should be provided at the FRTC to meet evolving DoN training needs in air warfare, strike warfare, and Naval special warfare. It concluded that training capabilities currently available at the FRTC do not, and will not, meet the real-world training needs identified by Fleet and Unified Commanders. Therefore, to minimize the identified shortcomings and provide the responsive and realistic training capabilities needed to meet evolving aviation and ground training requirements, PACFLT proposes to maintain and modernize the capabilities of the FRTC, including its land ranges, airspace, and infrastructure. The proposed modernization would have the benefit of maintaining and enhancing the safety and security of local and regional populations and infrastructure.

PACFLT's proposed action includes the renewal of the existing 202,859-acre public land withdrawal that expires on November 6, 2021; the withdrawal and reservation for military use of approximately 604,744 acres of additional public land to expand existing land ranges; acquisition of approximately 65,160 acres of non-federal land to expand existing land ranges; expansion of associated SUA, as well as reconfiguration of existing airspace; and modification of range infrastructure to support expansion and modernization. The aviation and ground training to be conducted in the modernized FRTC would be of the same general types and at the same tempos as analyzed by PACFLT in Alternative 2 of the Final EIS for Military Readiness Activities at Fallon Range Training Complex, Nevada (December 2015). Specific details concerning the proposed land expansion and SUA reconfiguration may be found on the project Web site at *www.FRTCModernization.com.*

The EIS will also assess the potential environmental effects of the no action alternative. Under the no action alternative, there would be no renewal of the existing land withdrawal, which expires on November 6, 2021, and there would be no range expansion, airspace changes, or modification of range infrastructure. As a result, the DoN would reassess the military mission of NAS Fallon and the FRTC.

In addition to the proposed action and the no action alternative, the EIS will also assess the potential environmental effects of other action alternatives. Public comments submitted during the scoping process will inform PACFLT's development of other action alternatives for analysis in the EIS.

Federal agencies, state agencies, local agencies, Native American Tribes and Nations, and interested persons are encouraged to provide comments to PACFLT to identify specific community interests, issues, or topics of environmental concern that PACFLT should consider in the EIS. Resource areas to be addressed in the EIS will include soils; air quality/climate; water quality; airborne noise; biological resources; land use and recreation; socioeconomics, environmental justice, and the protection of children; transportation; cultural resources; Native American traditional resources; and public health and safety.

The public scoping process starts with the publication of this Notice of Intent. Seven open house information sessions are scheduled to receive oral or written comments on issues to be addressed in the EIS:

1. Monday, October 3, 2016, 3:00 p.m. to 7:00 p.m., Fallon Convention Center, 100 Campus Way, Fallon, NV 89406.
2. Tuesday, October 4, 2016, 11:00 a.m. to 1:00 p.m., Pershing County Community Center, 820 6th Street, Lovelock, NV 89419.
3. Tuesday, October 4, 2016, 5:00 p.m. to 7:00 p.m., Evelyn Mount Northeast Community Center, 1301 Valley Road, Reno, NV 89512.
4. Wednesday, October 5, 2016, 5:00 p.m. to 7:00 p.m., Emma Nevada Town Hall, 135 Court Street, Austin, NV 89310.
5. Thursday, October 6, 2016, 5:00 p.m. to 7:00 p.m., Eureka Elementary School Multi-Purpose Room, 431 McCoy Street, Eureka, NV 89316.
6. Friday, October 7, 2016, 11:00 a.m. to 1:00 p.m., Hawthorne Convention Center, 950 E Street, Hawthorne, NV 89415.
7. Friday, October 7, 2016, 5:00 p.m. to 7:00 p.m., Gabbs School Gymnasium, 511 E Avenue, Gabbs, NV 89409.

Each of the seven information sessions will begin with a brief presentation about the project, followed by an open house with information stations staffed by PACFLT and DoN representatives. Additional information concerning each open house, as well as further project information, is available on the EIS Web page: *http://www.FRTCModernization.com.*

All comments, provided orally or in writing at the scoping meetings, or submitted via the project Web site or the U.S. Postal Service will be taken into consideration during EIS preparation. All comments must be postmarked or received online no later than November 25, 2016. Comments should be mailed to: Naval Facilities Engineering Command Southwest; Attention: Amy P. Kelley, Code EV21.AK; 1220 Pacific Highway; Building 1, 5th Floor; San Diego, California 92132.

Dated: August 18, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–20502 Filed 8–25–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of a Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Executive Order 12114, the United States Department of the Navy (Navy) has prepared and filed with the United States Environmental Protection Agency (USEPA) a Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (Draft SEIS/SOEIS) for employment of SURTASS LFA sonar.

DATES AND ADDRESSES: The public comment period for the SURTASS LFA sonar Draft SEIS/SOEIS will be open for 45 days, from August 26 to October 11, 2016. The Final SEIS/SOEIS is expected to be completed by June 2017. Written comments on the SURTASS LFA sonar Draft SEIS/SOEIS may be submitted by mail to: SURTASS LFA sonar SEIS/SOEIS Program Manager, 4350 Fairfax Drive, Suite 600, Arlington, VA 22203–1632, or by Email: *eisteam@surtass-lfa-eis.com.* The Draft SEIS/SOEIS is available for download via the project Web site: *http://www.surtass-lfa-eis.com.* Comments must be postmarked or received by October 11, 2016, to ensure they are considered in the Final SEIS/SOEIS.

FOR FURTHER INFORMATION CONTACT: SURTASS LFA sonar SEIS/SOEIS Program Manager, 4350 Fairfax Drive, Suite 600, Arlington, VA 22203–1632, Email: *eisteam@surtass-lfa-eis.com.*

SUPPLEMENTARY INFORMATION: In continuance of the Navy's commitment to responsible stewardship of the marine environment and building upon analyses and information included in the Navy's 2001 Final Overseas Environmental Impact Statement/Environmental Impact Statement (OEIS/EIS) published in the **Federal Register** on January 26, 2001 (66 FR 8788), 2007 Final Supplemental EIS (SEIS) published in the **Federal Register** on May 4, 2007 (72 FR 25302), 2012 Final SEIS/SOEIS published in the **Federal Register** on June 8, 2012 (77 FR 34041), and 2015 Final SEIS/SOEIS published in the **Federal Register** on January 30, 2015 (80 FR 5109), the Navy has prepared a comprehensive assessment of the potential environmental impacts associated with continued employment of SURTASS LFA sonar systems. Hereafter, "SURTASS LFA sonar systems" is inclusive of both the LFA and Compact LFA sonar systems, each having similar acoustic transmission characteristics.

The Navy proposes to continue employing up to four SURTASS LFA sonar systems onboard up to four Navy surveillance ships for routine training, testing, and military operations in the Pacific, Atlantic, and Indian oceans and the Mediterranean Sea, including certain geographic limitations on operation of SURTASS LFA sonar and implementation of mitigation and monitoring measures. The Draft SEIS/SOEIS evaluates the environmental impacts associated with two action alternatives and a No-Action Alternative. The primary difference between the action alternatives is that the Navy's preferred alternative reduces the annual permitted allowance of LFA sonar transmissions from 432 hours (Alternative 1) to 255 hours (Alternative 2) per ship. The Draft SEIS/SOEIS and associated analyses will also be used to support consultations associated with required regulatory permits and authorizations effective in 2017.

The Draft SEIS/SOEIS was distributed to appropriate federal, state, and local agencies and organizations, Native Alaskan and Native Tribal governments and organizations, and other interested parties. The Draft SEIS/SOEIS is available for public viewing and downloading at the following project Web site: *http://www.surtass-lfa-eis.com.* Compact disc copies of the Draft SEIS/SOEIS are available upon request from: SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4350 Fairfax Drive, Suite 600, Arlington, VA 22203–1632, Email: *eisteam@surtass-lfa-eis.com.* Compact discs of the Draft SEIS/OEIS are available for public review at the following public libraries:

1. Jacksonville Public Library, 303 N. Laura Street, Jacksonville, FL 32202;
2. Camden County Public Library, 1410 Hwy 40 E, Kingsland, GA 31548;
3. Ben May Main Library, 701 Government Street, Mobile, AL 36602;
4. Meridian-Lauderdale County Public Library, 2517 7th Street, Meridian, MS 39301;
5. New Orleans Public Library, 219 Loyola Avenue, New Orleans, LA 70112;
6. Houston Public Library, 500 McKinney Street, Houston, TX 77002;
7. New Hanover County Public Library, 201 Chestnut Street, Wilmington, NC 28401;
8. Anne Arundel County Public Library, 1410 West Street, Annapolis, MD 21401;
9. Charleston County Public Library, 68 Calhoun Street, Charleston, SC 29401;
10. Mary D. Pretlow Anchor Branch Library, 111 W. Ocean View Avenue, Norfolk, VA 23503;
11. Portland Public Library, 5 Monument Square, Portland, ME 04101;
12. Providence Public Library, 150 Empire Street, Providence, RI 02903;
13. Boston Public Library, 700 Boylston Street, Boston, MA 02116;
14. The Seattle Public Library, 1000 Fourth Avenue, Seattle, WA 98104;
15. Los Angeles Public Library, 630 W. 5th Street, Los Angeles, CA 90071;
16. San Francisco Public Library, 100 Larkin Street, San Francisco, CA 94102;
17. Oregon State University, 250 Winter Street NE., Salem, OR 97301;
18. Alaska Resources Library and Information Services, 3211 Providence Drive, Anchorage, AK 99508;
19. Hawaii State Library, 478 South King Street, Honolulu, HI 96813;
20. Nieves M. Flores Memorial Public Library, 254 Martyr Street, Hagåtña, Guam 96910; and
21. The Feleti Barstow Public Library, Pago Pago, American Samoa, 96799.

Written comments on the Draft SEIS/SOEIS can be submitted by mail: SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4350 Fairfax Drive, Suite 600, Arlington, VA 22203–1632, or by Email: *eisteam@surtass-lfa-eis.com.* All written comments must be postmarked by October 11, 2016 to ensure that they become part of the official record. All timely comments will be addressed in the Final SEIS/SOEIS. No public hearings or meetings will be held.

Dated: August 18, 2016.

C. Pan,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2016–20500 Filed 8–25–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated From DOE's Inventory of Depleted Uranium Hexafluoride

AGENCY: U.S. Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intention to prepare a Supplemental Environmental Impact Statement (SEIS) for its proposal to disposition depleted uranium oxide (DUO_X) conversion product from its depleted uranium hexafluoride (DUF_6) conversion facilities at the Paducah, Kentucky, and Portsmouth, Ohio, sites at up to three offsite low-level waste disposal facilities. The *Draft Supplemental Environmental Impact Statement for Disposition of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride* (DOE/EIS–0359–S1; DOE/EIS–0360–S1) will analyze potential environmental impacts from the proposed action to identify a final disposition location or locations for the DUO_X conversion product from both operating DUF_6 conversion facilities.

The proposed scope of the draft SEIS includes an analysis of potential environmental impacts from activities associated with the transportation to and disposition of depleted uranium oxide at three proposed disposition location alternatives: the DOE-owned low-level radioactive waste disposal facility at the Nevada National Security Site (NNSS) in Nye County, Nevada; the Energy*Solutions,* LLC (formerly known as Envirocare of Utah, Inc.) low-level waste disposal facility in Clive, Utah; and the newly identified location at the Waste Control Specialists, LLC (WCS) low-level waste disposal facility in Andrews, Texas.

ADDRESSES: Questions concerning the project or requests to be placed on the document distribution list can be sent to: Ms. Jaffet Ferrer-Torres, National Environmental Policy Act (NEPA) Document Manager, Office of Environmental Management, U.S. Department of Energy, EM–4.22, 1000 Independence Avenue SW., Washington, DC 20585; or to *DUF6_NEPA@em.doe.gov.* Additional information regarding the SEIS is available at: *http://www.energy.gov/em/disposition-uranium-oxide-conversion-depleted-uranium-hexafluoride.*

FOR FURTHER INFORMATION CONTACT: For further information on DOE's DUF_6 long-term management and disposal program, please contact Ms. Jaffet Ferrer-Torres, U.S. Department of Energy at the above **ADDRESSES**.

For information on DOE's NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0103; Telephone: (202) 586–4600, or leave a message at (800) 472–2756; or email at *askNEPA@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background

The use of uranium as fuel for nuclear power plants or for military applications requires increasing the proportion of the uranium-235 isotope found in natural uranium. Industrial uranium enrichment in the United States began as part of atomic bomb development during World War II. Uranium enrichment for both civilian and military uses was continued by the U.S. Atomic Energy Commission and its successor agencies, including DOE. Uranium enrichment by gaseous diffusion was carried out at three locations: the Paducah Site in Kentucky, the Portsmouth Site in Ohio, and the East Tennessee Technology Park in Oak Ridge, Tennessee.

DUF$_6$ results from the uranium enrichment process. The DUF$_6$ that remains after enrichment typically contains 0.2 percent to 0.4 percent uranium-235 and has been stored as a solid in large metal cylinders at the gaseous diffusion uranium enrichment facilities. The DUF$_6$ must be converted into a more stable form for disposal. The conversion process results in DUO$_X$ and aqueous hydrogen fluoride[1] (HF). DOE's existing inventory has over 760,000 metric tons (MT) (1 MT = 1,000 kilograms, approximately 2,205 pounds) of DUF$_6$. Approximately 54,000 MT, or 7% of this total, has already been converted at the end of calendar year 2015. DUF$_6$ is stored as a solid in steel cylinders that each hold approximately 10 to 14 MT of material. These cylinders are stacked two layers high in outdoor areas known as "yards." The Paducah Site has approximately 44,000 DUF$_6$ cylinders, and the Portsmouth Site has approximately 19,000 DUF$_6$ cylinders, for a total of about 63,000 cylinders. All DUF$_6$ cylinders produced at facilities in Tennessee were previously transported to the Portsmouth Site. Operating at planned capacity, the conversion plants would produce approximately 10,800 MT (11,900 tons) of DUO$_X$ annually at Portsmouth and 14,300 MT (15,800 tons) of DUO$_X$ annually at Paducah. The duration to convert the inventory of DUF$_6$ to DUO$_X$ is expected to be 18 years for the Portsmouth DUF$_6$ inventory and 25 years for Paducah's larger DUF$_6$ inventory.

Relationship to Existing NEPA Analyses

This SEIS represents the third phase of an environmental review process being used to evaluate and implement the DUF$_6$ long-term management program. As a first step and pursuant to Council on Environmental Quality (CEQ) and DOE NEPA implementing regulations at 40 CFR parts 1500–1508 and 10 CFR part 1021, respectively, DOE evaluated potential broad management options for its DUF$_6$ inventory in the *Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (DUF$_6$ PEIS)* (DOE/EIS–0269) issued in April 1999 (64 FR 19999; April 23, 1999). In the DUF$_6$ PEIS Record of Decision (ROD) (64 FR 43358; August 10, 1999), DOE decided to promptly convert the DUF$_6$ inventory to a more stable uranium oxide form and stated that it would use the depleted uranium oxide as much as possible and store the remaining depleted uranium oxide for potential future uses or disposal, as necessary. DOE did not select specific sites for the conversion facilities or disposal at that time, but reserved that decision for subsequent NEPA review.

In June 2004, DOE issued two EISs for construction and operation of DUF$_6$ conversion facilities and other actions at its Paducah, Kentucky and Portsmouth, Ohio sites (69 FR 34161; June 18, 2004). Both the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky Site (*DOE/EIS–0359*)* and the *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio Site* (DOE/EIS–0360) were prepared as a second phase of the environmental review process to evaluate and implement DOE's DUF$_6$ long-term management program. These EISs evaluated the potential environmental impacts of transportation and disposition of depleted uranium oxide at two potential off-site locations: at the DOE-owned low-level radioactive waste disposal facility at the Nevada Test Site (now known as NNSS), and at Envirocare of Utah, Inc. (now known as Energy*Solutions,* LLC), a commercial low-level waste disposal facility in Clive, Utah. RODs were published for both of these EISs on July 27, 2004 (69 FR 44649, 69 FR 44654). However, DOE deferred a decision on the transportation and disposition of the conversion product and committed to addressing that action at a later date.

In 2007, DOE prepared a draft Supplement Analysis (SA), in accordance with DOE NEPA implementing regulations at 10 CFR 1021.314, in order to determine whether there were substantial changes to the proposal or significant new circumstances or information relevant to environmental concerns that require preparation of a Supplemental EIS to decide disposition locations committed to in the 2004 RODs. DOE made the *Draft Supplement Analysis for Location(s) to Dispose of Depleted Uranium Oxide Conversion Product Generated from DOE's Inventory of Depleted Uranium Hexafluoride* (DOE/EIS–0359–SA–1 and DOE/EIS–0360–SA–1) publicly available on April 3, 2007 (72 FR 15869). The comments received associated with the scope of the draft SA suggested consideration of WCS's Andrews, Texas, site as a reasonable alternative, which will be considered in this SEIS. DOE determined that more time was needed to allow for resolution of regulatory questions at the disposal sites and did not issue a final SA.

In August 2014, the WCS facility near Andrews, Texas, was granted a license amendment by the Nuclear Regulatory Commission that would allow disposal of bulk uranium. As a result, DOE assumes, for purposes of planning, that WCS may be a new reasonable alternative as a disposal site for depleted uranium oxide conversion product. After due consideration of the existing DOE NEPA analyses summarized above, and any changes in the disposition activities currently being considered, DOE determined in March 2016 that a Supplemental EIS is warranted given that there are substantial changes to the proposal (in this case, a new alternative disposal site is under consideration), or potentially significant new circumstances or information relevant to environmental concerns given the time lapse since the 2004 EISs.

Purpose and Need for Agency Action

The purpose and need for this action is to dispose of DUO$_x$ that results from converting DOE's DUF$_6$ inventory to a more stable chemical form. This need follows directly from the decisions presented in the 2004 RODs for construction and operation of DUF$_6$ conversion facilities and other NEPA actions at its Paducah, Kentucky and Portsmouth, Ohio sites, that deferred DOE's decision related to the transportation to and disposal of depleted uranium oxide at potential off-site facilities.

Alternatives Considered

The proposed scope of the draft SEIS includes an analysis of the potential impacts from three action alternatives and the No Action alternative (in accordance with 40 CFR 1502.14). Under the No Action alternative, transportation to and disposal of the conversion product at an offsite low-level waste disposal facility would not occur and refilled cylinders of DUO$_x$ conversion product would remain at the DUF$_6$ conversion facility sites at DOE's Paducah and Portsmouth sites. The SEIS will also analyze and compare the potential impacts from three action alternatives that include transportation to and disposal of DUO$_x$ at three proposed alternative locations, including government-owned and privately-owned facilities: (1) The DOE-owned Area 5 waste disposal facility at the NNSS; (2) the Energy*Solutions* LLC, low-level waste disposal facility in Clive, Utah; and (3) the newly identified location at the WCS federal low-level waste disposal facility in Andrews, Texas.

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[1] The HF produced during conversion will be recycled into commercial product.

The SEIS analysis will include a review of available environmental data and information; comparative analyses of potential environmental and human health and safety impacts of DUO_x disposal at the three alternative locations (including updated information for the two offsite disposal locations previously identified and studied in the 2004 EISs); analyses of the potential environmental impacts of transporting DUO_x by rail or truck to each alternative site; and an evaluation of the No Action alternative.

Identification of Environmental Issues

The SEIS will examine potential public health and safety effects and environmental impacts from the proposed action. This notice is intended to inform agencies and the public of DOE's proposal. Although the following is not intended to be all inclusive or to imply any predetermination of impacts, these general categories of impacts will be considered in the SEIS: Land use; geology, soils, and geologic hazards, including seismicity; water resources (surface water and groundwater); biological resources; protected, threatened and endangered species, including species of special concern; human health and safety (both routine operations and potential accidents); air quality; noise; cultural and historic resources; waste management; environmental justice; and socioeconomics.

Public Participation in the SEIS Process

A public scoping process is optional for DOE Supplemental EISs (10 CFR 1021.311(f)), and there will be none for this project. However, DOE will provide opportunities for public review and comment, including public hearings, on the draft SEIS.

SEIS Preparation and Schedule

DOE expects to issue the draft SEIS in 2016.

Issued at Washington, DC, on August 19, 2016.

Frank Marcinowski,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 2016–20501 Filed 8–25–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2119–000]

Hartree Partners, LP; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hartree Partners, LP's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 8, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 19, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–20435 Filed 8–25–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–117–000.
Applicants: Northern States Power Company, a Wisconsin corporation.
Description: Second Supplement to May 10, 2016 Application of Northern States Power Company, a Wisconsin corporation for Authorization under FPA Section 203 to Acquire Jurisdictional Assets.
Filed Date: 8/16/16.
Accession Number: 20160816–5184.
Comments Due: 5 p.m. ET 9/6/16.

Docket Numbers: EC16–168–000.
Applicants: NRG Renew LLC, Four Brothers Holdings, LLC, Granite Mountain Renewables, LLC, Iron Springs Renewables, LLC.
Description: Joint Application for Approval Under Section 203 of the Federal Power Act and Request for Expedited Action of NRG Renew LLC, et al.
Filed Date: 8/18/16.
Accession Number: 20160818–5339.
Comments Due: 5 p.m. ET 9/8/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–136–000.
Applicants: Boulder Solar II, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Boulder Solar II, LLC.
Filed Date: 8/19/16.
Accession Number: 20160819–5125.
Comments Due: 5 p.m. ET 9/9/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2980–007; ER10–2983–007.
Applicants: Castleton Power, LLC, Castleton Energy Services, LLC.
Description: Notice of Non-Material Change in Status of Castleton Power, LLC, et al.
Filed Date: 8/19/16.

Accession Number: 20160819–5150.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER14–1933–004; ER13–1816–004; ER11–2935–006; ER10–2423–007; ER10–2414–005; ER10–2412–005; ER10–2411–005; ER10–2410–004; ER10–2409–004; ER10–2408–004; ER10–2406–005; ER10–2404–007; ER10–2399–004; ER10–2398–004.
Applicants: Blackstone Wind Farm, LLC, Blackstone Wind Farm II LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Headwaters Wind Farm LLC, High Trail Wind Farm, LLC, Marble River, LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm LLC, Old Trail Wind Farm, LLC, Paulding Wind Farm II LLC, Sustaining Power Solutions LLC.
Description: Supplement to August 10, 2016 Notice of Non-Material Change in Status of Blackstone Wind Farm, LLC, et al.
Filed Date: 8/19/16.
Accession Number: 20160819–5151.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–1922–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–08–19_Amendment to tariff revisions for MPFPs to be effective 8/6/2015.
Filed Date: 8/19/16.
Accession Number: 20160819–5129.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2441–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: DSA SBVMWD Waterman Hydroelectric Project to be effective 10/18/2016.
Filed Date: 8/18/16.
Accession Number: 20160818–5177.
Comments Due: 5 p.m. ET 9/8/16.

Docket Numbers: ER16–2442–000.
Applicants: Southern California Edison Company.
Description: Section 205(d) Rate Filing: Fast Track GIA and Service Agreement for SCE—PPA Project to be effective 8/19/2016.
Filed Date: 8/18/16.
Accession Number: 20160818–5271.
Comments Due: 5 p.m. ET 9/8/16.

Docket Numbers: ER16–2443–000.
Applicants: NextEra Blythe Solar Energy Center, LLC.
Description: Baseline eTariff Filing: NextEra Blythe Solar Energy Center, LLC MBR Application to be effective 8/19/2016.
Filed Date: 8/18/16.
Accession Number: 20160818–5330.
Comments Due: 5 p.m. ET 9/8/16.

Docket Numbers: ER16–2444–000.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: NYISO compliance re: revenue allocation—sale of historic fixed price TCCs to be effective 10/18/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5147.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2446–000.
Applicants: 4C Acquisition, LLC.
Description: Section 205(d) Rate Filing: 4CA Transfer of Functional Control Agreement to be effective 10/19/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5186.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2447–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Section 205(d) Rate Filing: 2016–08–19_SA 2837 Termination of NSP–North Star Solar PV LLC E&P (J385) to be effective 9/11/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5188.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2448–000.
Applicants: Black Hills/Colorado Electric Utility Company, LP.
Description: Section 205(d) Rate Filing: Boone Transmission Interconnection Agreement to be effective 10/19/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5191.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2449–000.
Applicants: Boulder Solar II, LLC.
Description: Initial rate filing: Market-Based Rate Tariff to be effective 9/1/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5192.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2450–000.
Applicants: Arizona Public Service Company.
Description: Section 205(d) Rate Filing: Rate Schedule No. 287—Letter of Concurrence to be effective 10/19/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5204.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2451–000.
Applicants: ISO New England Inc., New England Power Pool Participants Committee.
Description: Section 205(d) Rate Filing: Forward Capacity Market Enhancements to be effective 10/19/2016.
Filed Date: 8/19/16.
Accession Number: 20160819–5220.
Comments Due: 5 p.m. ET 9/9/16.

Docket Numbers: ER16–2452–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Generator Special Facilities Service Agreement No. 83 of Pacific Gas and Electric Company.
Filed Date: 8/19/16.
Accession Number: 20160819–5225.
Comments Due: 5 p.m. ET 9/9/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–53–000.
Applicants: MDU Resources Group, Inc.
Description: Application of MDU Resources Group, Inc. for authorization to issue securities and authorization to engage in methods of issuance other than competitive bidding and negotiated offers.
Filed Date: 8/19/16.
Accession Number: 20160819–5098.
Comments Due: 5 p.m. ET 9/9/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 19, 2016.

Kimberly D. Bose,
Secretary.

[FR Doc. 2016–20434 Filed 8–25–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9028–7]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements

Filed 08/15/2016 Through 08/19/2016 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160188, Final, NHTSA, NAT, Phase 2 Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, Review Period Ends: 09/26/2016, Contact: James Tamm 202–493–0515

EIS No. 20160189, Final, BLM, WY, Sheep Mountain Uranium Project, Review Period Ends: 09/26/2016, Contact: Tom Sunderland 307–332–8400

EIS No. 20160190, Draft, NMFS, OR, Analyze Impacts of NOAA's National Marine Fisheries Service Proposed Approval of the Continued Operation of 10 Hatchery Facilities for Trout, Salmon, and Steelhead Along the Oregon Coast, as Described in Oregon Department of Fish and Wildlife Hatchery and Genetic Management Plans Pursuant to Section 4(d) of the Endangered Species Act, Comment Period Ends: 10/26/2016, Contact: Lance Kruzic 541–957–3381

EIS No. 20160191, Draft, NOAA, HI, Enhancing Protections for Hawaiian Spinner Dolphins to Prevent Disturbance, Comment Period Ends: 10/24/2016, Contact: Susan Pultz 808–725–5150

EIS No. 20160192, Draft Supplement, USN, Other, Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar, Comment Period Ends: 10/11/2016, Contact: LCDR Mark Murnane 703–695–2866

Dated: August 23, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–20537 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0474; FRL–9950–66]

Science Advisory Committee on Chemicals; Establishment of a Federal Advisory Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), EPA is giving notice that, pursuant to section 2625(o) of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Agency is establishing the Science Advisory Committee on Chemicals (SACC). The purpose of the SACC is to provide independent advice and expert consultation, at the request of the EPA Administrator, with respect to the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures or approaches supporting implementation of the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Copies of the SACC charter will be filed with the appropriate congressional committees and the Library of Congress. The 14 members of the SACC will be selected from interested and available members of the existing EPA Chemical Safety Advisory Committee (CSAC). In addition, EPA invites the public to nominate experts to be considered for the Science Advisory Committee on Chemicals.

DATES: Nominations and comments must be received on or before October 11, 2016.

ADDRESSES: Submit your nominations and comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–0474, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Steven Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0103; email address: *knott.steven@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, disposal, and/or interested in the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority?

This committee is being established under FACA, 5 U.S.C. Appendix 2, and pursuant to the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

II. Purpose and Function of the Science Advisory Committee on Chemicals

The SACC is being established under FACA section 9(a), and pursuant to section 2625(o) of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches.

EPA's Office of Pollution Prevention and Toxics (OPPT) manages programs under the Frank R. Lautenberg Chemical Safety for the 21st Century Act, 15 U.S.C. 2601 *et seq.* and the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* Under these laws, EPA evaluates new and existing chemical substances and their risks, and finds ways to prevent or reduce pollution before it is released into the environment. OPPT also manages a variety of environmental stewardship programs that encourage companies to reduce and prevent pollution.

The SACC will be composed of approximately 14 members who will serve as Special Government Employees or Regular Government Employees (RGEs). The SACC expects to meet in person or by electronic means (*e.g.,* webinar) approximately 3 to 4 times a year, or as needed and approved by the Designated Federal Officer (DFO). Meetings will be held in the Washington, DC metropolitan area. The charter will be in effect for 2 years from the date it is filed with Congress. After the initial 2-year period, the charter will be renewed as authorized in accordance with section 14 of FACA (5 U.S.C. Appendix 2, Section 14). A copy of the charter will be available on the EPA Web site and in the docket.

III. Nominations Sought

Potentially, 9 of the 14 members of the SACC will be selected from interested and available members of the existing EPA Chemical Safety Advisory Committee (CSAC). Brief biographical sketches for CSAC members are posted on the CSAC Web site at *https://www.epa.gov/csac/chemical-safety-advisory-committee-members*. CSAC members who are interested and available for the SACC include:

1. Holly Davies, Ph.D., Senior Toxicologist, Department of Ecology, State of Washington, Olympia, WA.
2. William Doucette, Ph.D., Professor, Department of Civil and Environmental Engineering, Utah State University, Logan, UT.
3. Panos G. Georgopoulos, Ph.D., Professor of Environmental and Occupational Health, Rutgers Biomedical and Health Sciences—School of Public Health, Rutgers, The State University of New Jersey, Piscataway, NJ.
4. Kathleen Gilbert, Ph.D., Professor, Department of Microbiology and Immunology, University of Arkansas for Medical Sciences, Little Rock, AR.
5. John Kissel, Ph.D., Professor of Environmental and Occupational Health Sciences, University of Washington, Seattle, WA.
6. Jaymie Meliker, Ph.D., Associate Professor, Program in Public Health, Department of Family, Population, & Preventive Medicine, Stony Brook University, Stony Brook, NY.
7. Kenneth Portier, Ph.D., Vice President, Statistics and Evaluation Center, American Cancer Society, Atlanta, GA.
8. Daniel Schlenk, Ph.D., Professor of Aquatic Ecotoxicology and Environmental Toxicology, University of California, Riverside, Riverside, CA.
9. Kristina Thayer, Ph.D., Deputy Division Director of Analysis and Director, Office of Health Assessment and Translation, National Toxicology Program, National Institute of Environmental Health Sciences, Research Triangle Park, NC.

In addition to the 9 interested and available members of CSAC, EPA anticipates selecting 5 new members for the SACC. Nominations for membership are being solicited through publication of this document in the **Federal Register** and through other sources. Any interested person or organization may nominate him or herself or any qualified individual to be considered for the SACC. Nominations should include candidates who have demonstrated high levels of competence, knowledge, and expertise in scientific/technical fields relevant to chemical risk assessment and pollution prevention. In particular, the nominees should include representation of the following disciplines, including, but not limited to: Human health and ecological risk assessment, biostatistics, epidemiology, pediatrics, physiologically-based pharmacokinetics (PBPK), toxicology and pathology (including neurotoxicology, developmental/reproductive toxicology, and carcinogenesis), and chemical exposure to susceptible life stages and subpopulations (including women, children, and others). EPA values and welcomes diversity and encourages nominations of women and men of all racial and ethnic groups.

IV. Selection Criteria

In addition to scientific expertise, in selecting members, EPA will consider the differing perspectives and breadth of collective experience needed to address EPA's charge to the SACC, as well as the following:

- Background and experiences that would contribute to the diversity of scientific viewpoints on the committee, including professional experiences in government, labor, public health, public interest, animal protection, industry, and other groups, as the EPA Administrator determines to be advisable (*e.g.,* geographical location; social and cultural backgrounds; and professional affiliations);
- Skills and experience working on committees and advisory panels including demonstrated ability to work constructively and effectively in a committee setting;
- Absence of financial conflicts of interest or the appearance of a loss of impartiality;
- Willingness to commit adequate time for the thorough review of materials provided to the committee; and
- Availability to participate in committee meetings.

The names, affiliations and brief biographical sketches of the interested and available nominees will be published in the **Federal Register** for a 30 day public comment period. This same information for those who are selected by EPA to serve on the SACC will be available on the EPA Web site at *https://www.epa.gov/csac.*

Authority: 15 U.S.C. 2625 *et seq.;* 5 U.S.C. Appendix 2 *et seq.*

Dated: August 17, 2016.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–20550 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2016–0411; FRL–9950–21]

Mercury Compounds; Prohibition of Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA was directed by Congress to publish in the **Federal Register** a list of mercury compounds that are prohibited from export, not later than 90 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the Act), which amended the Toxic Substances Control Act (TSCA). The Act was enacted on June 22, 2016. Effective January 1, 2020, the statute prohibits export of: Mercury (I) chloride or calomel; mercury (II) oxide; mercury (II) sulfate; mercury (II) nitrate; and cinnabar or mercury sulphide, unless those mercury compounds are exported to member countries of the Organization for Economic Co-operation and Development for environmentally sound disposal, on the condition that no mercury or mercury compounds so exported are to be recovered, recycled, or reclaimed for use, or directly reused, after such export. EPA is not soliciting comments on this notice.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Sue Slotnick, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–1973; email address: *slotnick.sue@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture or export any of the five listed mercury compounds. The following list of North American Industrial Classification

System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Other Basic Inorganic Chemical Manufacturing (NAICS code 325180), *e.g.*, manufacturers of basic inorganic chemicals (except industrial gases and synthetic dyes and pigments);
- All Other Miscellaneous Chemical Product and Preparation Manufacturing (NAICS code 325998), *e.g.*, manufacturers of chemical products (except basic chemicals, resins, synthetic rubber; cellulosic and noncellulosic fiber and filaments; pesticides, fertilizers, and other agricultural chemicals; pharmaceuticals and medicines; paints, coatings and adhesives; soap, cleaning compounds, and toilet preparations; printing inks; explosives; custom compounding of purchased resins; and photographic films, papers, plates, and chemicals);
- Analytical Laboratory Instrument Manufacturing (NAICS code 334516), *e.g.*, manufacturers of instruments and instrumentation systems for laboratory analysis of the chemical or physical composition or concentration of samples of solid, fluid, gaseous, or composite material; or
- Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), *e.g.*, merchant wholesale distributors of chemicals and allied products (except agricultural and medicinal chemicals, paints and varnishes, fireworks, and plastics materials and basic forms and shapes).

II. What action is the Agency taking?

As directed in TSCA section 12(c)(7)(B), 15 U.S.C. 2611(c)(7)(B), EPA is publishing a list of mercury compounds prohibited from export under TSCA section 12(c), as amended. EPA must publish this list not later than 90 days after June 22, 2016 (15 U.S.C. 2611(c)(7)(B)). Effective January 1, 2020, the statute prohibits export of: Mercury (I) chloride or calomel; mercury (II) oxide; mercury (II) sulfate; mercury (II) nitrate; and cinnabar or mercury sulphide (15 U.S.C. 2611(c)(7)(A)(i)–(v)). The respective Chemical Abstracts Service Registry Numbers (CASRN) associated with the enumerated chemical substances are: 10112–91–1, 21908–53–2, 7783–35–9, 10045–94–0, and 1344–48–5. The statute also provides that EPA, on determining that exporting any additional mercury compound for the purpose of regenerating elemental mercury is technically feasible, may add by rule such mercury compound to the published list (15 U.S.C. 2611(c)(7)(A)(vi)). In addition, any person may petition EPA to add a mercury compound to this published list (15 U.S.C. 2611(c)(7)(C)). The statute provides an exception to the export prohibition for export of listed mercury compounds to member countries of the Organization for Economic Co-operation and Development for environmentally sound disposal, on the condition that no mercury or mercury compounds so exported are to be recovered, recycled, or reclaimed for use, or directly reused, after such export (15 U.S.C. 2611(c)(7)(D)). EPA is not soliciting comments on this notice.

Authority: 15 U.S.C. 2611(c)

Dated: August 12, 2016.

Jim Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2016–20534 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0498; FRL–9951–53–OGC]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA”), notice is hereby given of a proposed settlement agreement to settle lawsuits filed by CTA Construction and Environmental, LLC, and National Electric Coil, Inc. (“Petitioners”), in the United States Court of Appeals for the Ninth Circuit: *CTA Construction and Environmental, LLC, et al.,* v. *EPA,* Nos. 15–72796 and 15–72810. On September 15, 2015, Petitioners filed petitions for review challenging, generally, the Environmental Protection Agency’s (EPA) July 15, 2015, administrative compliance order (“Amended Order”) issued by EPA under the CAA and the Resource Conservation and Recovery Act (“RCRA”) and challenging, specifically, the CAA provisions of the Amended Order. Under the terms of the proposed settlement agreement, Petitioners will voluntarily dismiss their petitions for review of the Amended Order, with prejudice, in exchange for EPA’s agreement that EPA will not seek administrative or civil penalties from the Petitioners for the CAA violations alleged in the Amended Order.

DATES: Written comments on the proposed settlement agreement must be received by September 26, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0498, online at *www.regulations.gov* (EPA’s preferred method); by email to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Susan Stahle, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–1272; fax number (202) 564–5603; email address: *stahle.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement would settle Petitioners’ petitions for review in the United States Court of Appeals for the Ninth Circuit challenging, under CAA section 307(b)(1), the CAA provisions of the Amended Order. The proposed settlement agreement would require Petitioners to voluntarily dismiss their petitions for review of the Amended Order, with prejudice, in exchange for EPA’s agreement that EPA will not seek administrative or civil penalties from the Petitioners for the CAA violations alleged in the Amended Order. The proposed settlement agreement also provides for each party to bear its own litigation costs.

For a period of 30 days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to the agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the proposed settlement agreement?

Direct your comments to the official public docket for this action under Docket ID No. EPA–HQ–OGC–2016–0498 which contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search".

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 18, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–20403 Filed 8–25–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1035]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 25, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1035.

Title: Part 73, Subpart F International Broadcast Stations.

Form No.: FCC Forms 309, 310 and 311.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents/Responses: 225 respondents; 225 responses.

Estimated Time per Response: 2–720 hours.

Frequency of Response: Recordkeeping requirement; On occasion, semi-annual, weekly and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. 154, 303, 307, 334, 336 and 554.

Total Annual Burden: 20,096 hours.

Annual Cost Burden: $97,025.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission (“Commission”) is requesting that the Office of Management and Budget (OMB) approve a three year extension of the information collection titled “Part 73, Subpart F International Broadcast Stations” under OMB Control No. 3060–1035. This information collection is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. The Commission collects this information pursuant to 47 CFR part 73, subpart F. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. Therefore, the information collection requirements are as follows:

FCC Form 309—Application for Authority To Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station—The FCC Form 309 is filed on occasion when the applicant is requesting authority to construct or make modifications to the international broadcast station.

FCC Form 310—Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station License—The FCC Form 310 is filed on occasion when the applicant is submitting an application for a new international broadcast station.

FCC Form 311—Application for Renewal of an International or Experimental Broadcast Station License—The FCC Form 311 is filed by applicants who are requesting renewal of their international broadcast station licenses.

47 CFR 73.702(a) states that six months prior to the start of each season, licensees and permittees shall by informal written request, submitted to the Commission in triplicate, indicate for the season the frequency or frequencies desired for transmission to each zone or area of reception specified in the license or permit, the specific hours during which it desires to transmit to such zones or areas on each frequency, and the power, antenna gain, and antenna bearing it desires to use. Requests will be honored to the extent that interference and propagation conditions permit and that they are otherwise in accordance with the provisions of section 47 CFR 73.702(a).

47 CFR 73.702(b) states that two months before the start of each season, the licensee or permittee must inform the Commission in writing as to whether it plans to operate in accordance with the Commission’s authorization or operate in another manner.

47 CFR 73.702(c) permits entities to file requests for changes to their original request for assignment and use of frequencies if they are able to show good cause. Because international broadcasters are assigned frequencies on a seasonal basis, as opposed to the full term of their eight-year license authorization, requests for changes need to be filed by entities on occasion.

47 CFR 73.702 (note) states that permittees who during the process of construction wish to engage in equipment tests shall by informal written request, submitted to the Commission in triplicate not less than 30 days before they desire to begin such testing, indicate the frequencies they desire to use for testing and the hours they desire to use those frequencies.

47 CFR 73.702(e) states within 14 days after the end of each season, each licensee or permittee must file a report with the Commission stating whether the licensee or permittee has operated the number of frequency hours authorized by the seasonal schedule to each of the zones or areas of reception specified in the schedule.

47 CFR 73.782 requires that licensees retain logs of international broadcast stations for two years. If it involves communications incident to a disaster, logs should be retained as long as required by the Commission.

47 CFR 73.759(d) states that the licensee or permittee must keep records of the time and results of each auxiliary transmitter test performed at least weekly.

47 CFR 73.762(b) requires that licensees notify the Commission in writing of any limitation or discontinuance of operation of not more than 10 days.

47 CFR 73.762(c) states that the licensee or permittee must request and receive specific authority from the Commission to discontinue operations for more than 10 days under extenuating circumstances.

47 CFR 1.1301–1.1319 cover certifications of compliance with the National Environmental Policy Act and how the public will be protected from radio frequency radiation hazards.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2016–20516 Filed 8–25–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1092]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission’s burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of

information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before October 25, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Numbers: FCC Forms 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for profit institutions; and State, Local and Tribal Governments.

Number of Respondents: 1,100 respondents; 2,750 responses.

Estimated Time per Response: .50 hours to 6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 4(i), 308(b), 309(j)(3) and 309(j)(4).

Total Annual Burden: 7,288 hours.

Total Annual Cost: $2,223,375.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of a historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the three year clearance from them. FCC Form 609–T is used by Designated Entities (DEs) to request prior Commission approval pursuant to Section 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the FCC to determine whether the public interest would be served by the approval of the reportable eligibility event.

FCC Form 611–T is used by DE licensees to file an annual report, pursuant to Section 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

The information collected will be used to ensure that only legitimate small businesses reap the benefits of the Commission's designated entity program. Further, this information will assist the Commission in preventing companies from circumventing the objectives of the designated entity eligibility rules by allowing us to review: (1) The FCC 609–T applications seeking approval for "reportable eligibility events" and (2) the FCC Form 611–T annual reports to ensure that licensees receiving designated entity benefits are in compliance with the Commission's policies and rules.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary.

[FR Doc. 2016–20520 Filed 8–25–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission

ACTION: Notice of amendment to system of records; three new routine uses.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) has amended an existing system of records, FCC/OMD–17, Freedom of Information Act (FOIA) and Privacy Act Requests, subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the agency (5 U.S.C. 552a(e)(4)). The FCC's Office of the Managing Director (OMD) will use FOIAonline, *https://foiaonline.regulations.gov/foia/action/public/home,* an online portal that permits the public to file initial Freedom of Information Act (FOIA) requests and appeals. FOIAonline also permits the public to search various fields of data (as designated by the FCC) concerning FOIA requests, appeals, and responsive records. The FCC began participating in FOIAonline in February 2015. The system has been operational since then without incident.

DATES: Written comments are due on or before September 26, 2016. This action will become effective on October 5, 2016 unless comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov,* and to obtain a copy of the Narrative Statement, which includes details of the proposed alterations to this system of records.

SUPPLEMENTARY INFORMATION: The FCC previously gave notice of this system of records, FCC/OMD–17, by publication in the **Federal Register** on April 5, 2006 (65 FR 17234, 17261). This notice serves to update and amend FCC/OMD–17, Freedom of Information Act (FOIA) and Privacy Act Requests, as a result of an increased use of automated information technology and new program guidance.

FCC/OMD–17

SYSTEM NAME:

Freedom of Information Act (FOIA) and Privacy Act Requests.

SYSTEM LOCATION:

FOIA and Privacy Act request files are maintained at the Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554. Information related to FOIA requests and appeals is also stored in the FOIAonline database, available at *https://foiaonline.regulations.gov/foia/action/public/home.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system include, but are not limited to individuals who submit Freedom of Information Act (FOIA) and Privacy Act requests, or administrative appeals; and individuals who are the subject of FOIA and Privacy Act requests and appeals or whose personally identifiable information is contained in records covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain information about individuals most commonly including name, home address, email address, telephone or cell phone numbers, and less frequently may include date of birth, social security number, and driver's license number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552 and 5 U.S.C. 552a.

PURPOSE(S):

The Commission's Performance Evaluation and Records Management staff (PERM) of the Office of Managing Director collects and maintains the information in this system through FOIAonline (*https://foiaonline.regulations.gov/foia/action/public/home*), an online portal for filing FOIA requests and appeals. PERM also maintains FOIA request files, including responses to FOIA requests and appeals, and correspondence with requesters. The records are required to permit the Commission to effectively, efficiently, and appropriately process and respond to FOIA and Privacy Act requests and administrative appeals. These records are also necessary for defending Commission action in litigation challenging FOIA and Privacy Act responses by the agency; for compiling mandatory reports and responses to inquiries from Congress, the Department of Justice (DOJ), the Office of Government Information Services (OGIS) of the National Archives and Records Administration (NARA), the Office of Management and Budget (OMB), the General Services Administration (GSA), and the Government Accountability Office (GAO). The records are also used to respond to congressional inquiries from both Congressional committees and from individual members of Congress inquiring on behalf of a constituent.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows. In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose(s) for which the records were collected:

1. Public Access—The FCC authorizes public access to FOIA requests and appeals through FOIAonline (*https://foiaonline.regulations.gov/foia/action/public/home*) to the names of FOIA requesters, dates related to the processing of the request, and a description of the records sought by the requester (excluding any personally identifiable information in the description of the records, such as telephone or cell phone numbers, home or email addresses, social security numbers), unless the requester asks for the redaction of any personally identifiable information (PII). This information may also be used to create a publicly available log of requests.

2. Determinations on Access—To assist the FCC in making an access determination, a record from the system may be shared with (a) the person or entity that originally submitted the record to the agency or is the subject of the record or information; or (b) another Federal entity.

3. Adjudication and Litigation—To the Department of Justice (DOJ), or other administrative body before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where DOJ or the FCC has agreed to represent the employee; or (d) the United States is a party to litigation or has an interest in such litigation, and the use of such records by DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

4. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

5. Congressional Inquiries—To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

6. Government-wide Program Management and Oversight—To the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

7. National Archives and Records Administration—To the National Archives and Records Administration, Office of Government Information Services (OGIS), to the extent necessary to fulfill its responsibilities in 5 U.S.C. 552(h), to review administrative agency policies, procedures, and compliance with the Freedom of Information Act (FOIA), and to facilitate OGIS' offering of mediation services to resolve disputes between persons making FOIA requests and administrative agencies.

8. Breach Notification—To appropriate agencies, entities, and persons when (a) the Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm; and

9. For Non-Federal Personnel—To disclose information to contractors performing or working on a contract for the Federal Government.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system includes both paper and electronic records. The paper records, documents, and files are maintained in file cabinets that are located in the OMD/PERM FOIA Public Liaison's office suite and the Office of General Counsel, and in the bureaus and offices of the FCC staff who provide the responses to FOIA/Privacy Act requests. The electronic records, files, and data are stored in FOIAonline and in the FCC's computer network.

RETRIEVABILITY:

Records in this system of records are most often retrieved by the control number for the request, but may be retrieved by an individual's name, organization, or request description. Records concerning initial requests under the FOIA and the Privacy Act are maintained by the FOIA Public Liaison in FOIAonline. Inquiries regarding these records should be addressed to the FOIA Public Liaison, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

Records concerning administrative appeals for access requests under the FOIA and records concerning administrative appeals for access requests and accountings of disclosure requests under the Privacy Act are maintained by the FCC's Office of General Counsel and in FOIAonline. Inquiries regarding these records should be addressed to the General Counsel, Office of General Counsel, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554 or to *FOIA-Appeal@fcc.gov.*

SAFEGUARDS:

Access to the file cabinets containing paper records in this system are maintained in the FOIA Public Liaison's office and in the bureau or office suites accessible through card-coded main doors. The FOIA file cabinets in the office of the FOIA Public Liaison are locked at the end of the business day. Access to these FOIA files is restricted to authorized supervisors and staff who are responsible for responding to the FOIA requests or appeals.

The electronic records, files, and data are housed in FOIAonline and in the FCC's computer network. Access to the electronic files is restricted to staff in the bureaus and offices who are responsible for responding to FOIA requests, and to the Information Technology Center (ITC) staff and contractors who maintain the FCC's computer network. Other FCC employees and contractors may be granted access on a "need-to-know" basis. The FCC's computer network databases are protected by the FCC's IT privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal IT privacy standards, including those required by the National Institute of Standards and Technology (NIST) and the Federal Information Security Management Act (FISMA).

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the National Archives and Records Administration's General Records Schedule 4.2, Items 020, 040, 050, 070, and 090.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA Public Liaison, Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

FOIAonline is managed by the U.S. Environmental Protection Agency, Office of Information Collection, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to FOIA Public Liaison, Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, email: *FOIA@fcc.gov.* Individuals must furnish reasonable identification by showing any two of the following: Social security card; driver's license; employee identification card; Medicare card; birth certificate; bank credit card; or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000. Individuals requesting access to records concerning themselves must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 0, subpart E).

RECORD ACCESS PROCEDURES:

Access to information about FOIA requests and appeals is available through FOIAonline, *https://foiaonline.regulations.gov/foia/action/public/home.* Individuals wishing additional information about records in this system should follow the Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to contest information pertaining to him or her in the system of records should follow the Notification Procedure above.

RECORD SOURCE CATEGORIES:

The sources for the information in this system of records are the individuals making requests under FOIA or the Privacy Act; the individuals who are the subjects of FOIA or Privacy Act requests; the attorneys or representatives of the requesters and the subjects of the requests; communication between FCC organizational units (bureaus and offices), and the investigative materials and related documentation and decisions involved in appeals, amendments, and litigation concerning FOIA responses, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer, Office of the Secretary.

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FEDERAL RESERVE SYSTEM

[Docket No. OP–1521]

Supervisory Rating System for Financial Market Infrastructures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) granted the Board of Governors of the Federal Reserve System (Board) enhanced authority to supervise financial market utilities that are designated as systemically important by the Financial Stability Oversight Council (financial market utilities are defined to comprise a subset of the entities that, outside the United States, are generally called financial market infrastructures or FMIs). In addition, the Board may have direct supervisory authority over other FMIs subject to its jurisdiction. The Board has approved the use of the ORSOM (*O*rganization; *R*isk Management; *S*ettlement; *O*perational Risk and Information Technology (IT); and *M*arket Support, Access, and Transparency) rating system in reviews of FMIs by the Board and, under delegated authority, the Federal Reserve Banks (collectively, the Federal Reserve).

DATES: The Board will begin using the FMI rating system on October 27, 2016.

FOR FURTHER INFORMATION CONTACT: Stuart Sperry, Deputy Associate Director (202) 452–2832 or Kristopher Natoli, Manager (202) 452–3227, Division of Reserve Bank Operations and Payment Systems; Evan H. Winerman, Counsel (202) 872–7578, Legal Division; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Background

FMIs are multilateral systems that transfer, clear, settle, or record payments, securities, derivatives, or other financial transactions among participants or between participants and the FMI operator. FMIs include payment systems, central securities depositories, securities settlement systems, central counterparties, and trade repositories. FMIs can strengthen the markets that they serve and play a critical role in fostering financial stability. If not properly managed, however, they can pose significant risks to the financial system and be a potential source of contagion, particularly in periods of market stress. For example, improperly managed FMIs can be sources of financial shocks or channels through which shocks are transmitted across domestic and international financial markets.

The Federal Reserve supervises certain FMIs that provide payment, clearing, and settlement services for critical U.S. financial markets. Specifically, under Title VIII of the Dodd-Frank Act, the Federal Reserve is the Supervisory Agency for certain designated financial market utilities (DFMUs).[1] These DFMUs are subject to risk-management standards set out in Regulation HH.[2] In addition, the Federal Reserve may have supervisory authority over FMIs that are operated by state member banks, Edge or agreement corporations, or bank holding companies. Furthermore, the Board supervises FMIs that are operated by the Federal Reserve Banks, such as the Fedwire Funds Service.[3] These latter two categories of FMIs are expected to meet the risk-management standards set out in the Board's Payment System Risk (PSR) policy.[4] The risk management standards set out in both Regulation HH and the PSR policy are based on the Principles for Financial Market Infrastructures (PFMI).[5]

The ORSOM (*O*rganization; *R*isk Management; *S*ettlement; *O*perational Risk and IT; and *M*arket Support, Access, and Transparency) rating system is a supervisory tool that the Federal Reserve will use to provide a consistent internal framework for performing FMI assessments across the Federal Reserve's FMI portfolio.[6] The ORSOM rating system will be applied to DFMUs for which the Board is the Supervisory Agency pursuant to Title VIII, other FMIs over which the Board has supervisory authority because they are members of the Federal Reserve System, and FMIs that are operated by the Federal Reserve Banks.[7] The Federal Reserve will convey the annual rating to a DFMU's management and board of directors. The rating system is designed to link supervisory assessments and messages to the regulations and guidance that form the foundation of the supervisory program, such as Regulation HH and the PSR policy. The Board issued a notice requesting comments on all aspects of the rating system.[8]

Summary of Public Comments and Analysis

The Board received two public comment letters on the notice and request for comment. The Board considered these comments in developing its final FMI rating system. Except as noted herein, the Board is adopting the rating system's text as proposed.[9]

Overall Approach

The Board proposed to use the ORSOM rating system as a supervisory tool for providing a consistent internal framework for performing annual FMI assessments across the Federal Reserve's FMI portfolio, which includes DFMUs for which the Board is the Supervisory Agency pursuant to Title VIII, other FMIs over which the Board has supervisory authority because they are members of the Federal Reserve System, and FMIs that are operated by the Federal Reserve Banks. Commenters were generally supportive of the Board's effort to establish a consistent approach to rating FMIs. Both commenters, however, raised two general concerns about the Board's overall approach: (1) That the rating system would create new obligations beyond those that already exist in Regulation HH and (2) that an FMI's rating would depend excessively on supervisory judgment.

The Board's FMI rating system is an internal supervisory tool that is intended to assist supervisors in assessing FMIs against regulatory requirements, but it does not create any new obligations or requirements for FMIs. In establishing a consistent internal framework for discussing FMI assessments, the FMI rating system instructs supervisory staff to consider relevant regulations and related guidance. The explanatory language provided for each of the rating system's categories is intended to describe generally the range of issues covered in each category's relevant regulations and guidance. The Board has revised the ratings system to address concerns that it expands on already-applicable requirements. For example, the Board has added clarifying language to the rating system's Introduction section and made technical edits throughout to align each category's explanatory language more closely with Regulation HH's text.

With regard to the role that supervisory judgment plays in determining an FMI's rating, the Board believes that the rating system must provide examiners with the ability to use their expertise and judgment when determining an FMI's rating. An FMI's category and composite ratings reflect many factors that may vary in importance for each FMI. Supervisory staff's judgment will be guided by the relevant regulations and guidance, as well as by the Board's internal processes for ensuring consistent treatment of similarly situated FMIs.

The Board agrees with commenters that supervisory staff should explain the supervisory judgment underlying an FMI's rating. The rating system is designed to facilitate a clear and logical discussion of the FMI's condition with the FMI's management and board of directors. Supervisory staff will continue its current practice of explaining the factors that determine an FMI's rating.

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[1] The term financial market utility (FMU) is defined in Title VIII as "any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person" (12 U.S.C. 5462(6)). FMUs are a subset of FMIs; for example, trade repositories are excluded from the definition of an FMU. Pursuant to section 804 of the Dodd-Frank Act, the Financial Stability Oversight Council (Council) is required to designate those FMUs that the Council determines are, or are likely to become, systemically important. Such a designation by the Council makes an FMU subject to the supervisory framework set out in Title VIII of the Dodd-Frank Act.

The term Supervisory Agency is defined in Title VIII as the "Federal agency that has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws" (12 U.S.C. 5462(8)). Currently, the Board is the Supervisory Agency for two DFMUs: (i) The Clearing House Payments Company, L.L.C., on the basis of its role as operator of the Clearing House Interbank Payments System (CHIPS), and (ii) CLS Bank International (CLS).

[2] 12 CFR 234.3.

[3] *See* Sections 11(a)(1) and 11(j) of the Federal Reserve Act, 12 U.S.C. 248(a)(1) and 248(j).

[4] The Board's PSR policy is available at *http://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

[5] The PFMI, published by the Committee on Payment and Settlement Systems (now the Committee on Payments and Market Infrastructures) and the Technical Committee of the International Organization of Securities Commissions in April 2012, is widely recognized as the most relevant set of international risk-management standards for payment, clearing, and settlement systems.

[6] The ORSOM rating system replaces the Federal Reserve's existing rating system, which is referred to as SCIISO. SCIISO stands for *S*upervision and organization; *C*ompliance, *I*nternal controls and audit; *I*nformation technology/electronic data processing; *S*ettlements and liquidity; and General *O*rganization. SCIISO was originally developed to facilitate the Federal Reserve's supervision of the Depository Trust Company, but subsequently was adapted and applied to The Clearing House Payments Company LLC as operator of the CHIPS payment system, CLS Bank International, and the Warehouse Trust Company LLC. The Federal Reserve did not seek public comment when SCIISO was introduced.

[7] At present, the first group includes CLS and CHIPS, the second group includes the Depository Trust Company, and the third group includes Fedwire Funds Service and Fedwire Securities Service.

[8] 80 FR 70211 (Nov. 13, 2015).

[9] The Board is also making several technical edits, which are not specifically addressed in the discussion below.

Alignment With Regulation HH

Commenters requested that the Board make multiple changes to the rating system that would align the rating system more closely with the text of Regulation HH. The rating system is fundamentally derived from, and should reflect, the requirements of Regulation HH and the PSR policy. Therefore, the Board made technical clarifications throughout the rating system to align explanatory language more closely with Regulation HH's text. Examples include changing the explanatory language in the Board and Management Oversight subcomponent of the Organization category to specify that the requirement for independent validation focuses on risk-management models; the Risk Management category to reflect verbatim Regulation HH's requirement pertaining to recovery and orderly wind-down plans; and the Settlement category to reflect verbatim Regulation HH's requirement that FMIs provide clear and certain final settlement.

Both commenters raised concerns regarding the explanatory language in the Market Support, Access and Transparency category, which states that "the analysis under this category considers . . . the efficiency with which [the FMI] consumes resources in providing its services." Commenters believed that this language was vague. The Board is retaining this language in the ratings system guidance because Regulation HH requires that a DFMU operate efficiently.[10] The Board explained this concept in preamble text to the notice of proposed rulemaking with respect to these provisions of Regulation HH, stating that "efficiency generally encompasses what a DFMU chooses to do, how it does it, and the resources required by the DFMU to perform its functions."[11] As the Board explained further, "there is an inherent tradeoff between safety (that is, risk management) and efficiency (that is, direct and indirect costs) in the design and management of a designated FMU."[12] The Board noted that "[a] designated FMU's design; operating structure; scope of payment, clearing, and settlement activities; and use of technology can influence its efficiency and can ultimately provide incentives for market participants to use, or not use, the designated FMU's services. In certain cases, inefficiently designed systems may increase operational costs to the point that it would be cost prohibitive for participants to use the designated FMU. As a result, the inefficiency could drive market participants toward less-safe alternatives, such as bilateral clearing or settlement on the books of the participants."[13]

References to Relevant Statutes, Regulations and Guidance

One commenter requested that the Board provide more specific examples of the relevant guidance to which examiners would refer when determining an FMI's rating. For each category, the Board has, to the extent possible, specified the relevant statutes, regulations, and guidance that factor into that category's rating. In the case of the Operational Risk and IT category, the Board refers to "FFIEC and relevant industry guidance." In assessing an FMI's performance under Regulation HH's requirements with respect to operational risk and cybersecurity policies and procedures,[14] the Board will be guided by leading information, communication and technology (ICT) and information and cyber security standards and guidelines. Some of these standards and guidelines are reflected in Federal Reserve and FFIEC guidance, as well as guidance supporting the PFMI (such as CPMI–IOSCO's forthcoming Guidance on Cyber Resilience for Financial Market Infrastructures). The Board believes that in light of the rapidly evolving IT and cyber risk landscapes, further specification of relevant industry guidance would date itself quickly. Further, as the Board has stated, the rating system is an internal supervisory tool that does not create new regulatory requirements. DFMUs subject to the jurisdiction of the Federal Reserve as the Supervisory Agency under Title VIII of the Dodd-Frank Act should adhere to, and will be assessed against, Regulation HH's provisions, and examiners will clearly communicate with the FMIs the standards against which they are being rated.

Board and Management Responsiveness

The proposed text of the Board and Management Oversight stated that "[t]his rating evaluates how effectively the board of directors and senior management guide and manage the FMI, and ensure that the FMI operates in a safe and sound manner; specific considerations in this regard include management's responsiveness to supervisory concerns." One commenter requested the Board confirm its understanding that this language refers to issues that the Board identifies and that the FMI agrees to address and not to issues that are subject to a formal appeals process. FMI ratings are an internal tool for Federal Reserve supervisors, and, unlike ratings of insured depository institutions and their holding companies, do not carry any automatic implications with respect to supervisory or regulatory interventions or requirements. Therefore, the Board does not have a formal appeals process for its supervisory ratings at this time.

The Board expects FMI management to respond appropriately to supervisory concerns. Title VIII requires the Board to prescribe risk management standards governing DFMUs' operations related to payment, clearing, and settlement activities, and to conduct annual examinations of relevant DFMUs for which it is the Supervisory Agency to determine, among other things, their safety and soundness, as well as their compliance with Title VIII and any rules and orders prescribed thereunder. If supervisory staff believes that a DFMU's board and management are failing to respond to supervisory concerns and thereby undermining the DFMU's safety and soundness or threatening financial stability, supervisory staff will incorporate that determination into its assessment of board and management oversight, regardless of whether the board and management disagree with supervisory staff's conclusions.

Text of the Supervisory Rating System for FMIs

Introduction

Under the ORSOM rating system for financial market infrastructures (FMIs), the Federal Reserve develops a rating for each of the ORSOM categories and rolls those category ratings into an overall composite rating. The rating system is designed to (1) be clearly tied to relevant Federal Reserve regulations and guidance, (2) facilitate a clear and logical discussion of the FMI's condition with the FMI's management and board of directors, (3) be easily understood and used by both supervisors and FMIs, (4) be flexible, (5) facilitate comprehensive and consistent assessments across the Federal Reserve's FMI portfolio, and (6) promote financial stability by ensuring that systemically important FMIs understand and are held to the Federal Reserve's rigorous risk-management standards. Importantly, the rating system is an internal supervisory tool that does not create new regulatory requirements; the explanatory language provided for each of the ratings system's categories is intended to describe generally the range of issues covered in each category's relevant regulations and guidance.

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[10] *See* 12 CFR 234.3(a)(21).

[11] 79 FR 3666, 3685 (Jan. 22, 2014).

[12] *Id.* at 3685–86.

[13] *Id.*

[14] 12 CFR 234.3(a)(17).

Additionally, the rating system is designed to allow for supervisory judgment and discretion, and should not be viewed as establishing a formula for determining an FMI's rating. Each of the assigned ratings, including the composite rating, should reflect supervisory judgment about the importance of the individual categories and issues as they pertain to the FMI. Relevant provisions of Regulation HH and the Payment System Risk (PSR) policy, which are reflected in each rating category, help to organize and structure each category's rating. The criticality of categories and issues, however, may differ among FMIs because of factors such as their differing services, risk profiles, and operational and organizational structures. An FMI's rating will also take into account the FMI's responsiveness to supervisory concerns and the demonstrated effectiveness of any measures that the FMI has implemented to address the root cause of those concerns.

Categories

The ORSOM rating system consists of the following five categories, which were selected to highlight broadly the risk management issues that FMIs face, to guide supervisory examinations, and to provide a structure for organizing assessment letters:

- Organization
- Risk Management
- Settlement
- Operational Risk and IT
- Market Support, Access, and Transparency

Analysis of the issues considered under each category should be consistent with Regulation HH, the PSR policy, and relevant guidance, such as supervision and regulation (SR) letters and guidance of the Federal Financial Institutions Examination Council (FFIEC). The categories' order is not a reflection of their relative importance. The weight prescribed to either a category or a category's components is a matter of supervisory judgment and expertise, and may differ among FMIs. In addition, supervisory staff's assessment of an FMI should take into account the categories' interrelationships and the FMI's entire risk management framework, and should integrate knowledge derived from all available sources, including examination work, continuous monitoring efforts, and other relevant sources (for example, the processes set forth in Regulation HH and Board policy regarding advance notice of material changes proposed by designated financial market utilities (DFMUs) and the Federal Reserve Banks' Fedwire services, respectively, and lessons learned from market events). Finally, an FMI's category rating should reflect consideration of the demonstrated effectiveness of any remediation measures that the FMI has implemented to address the root cause of supervisory concerns.

Organization

The foundations of an FMI's risk management framework are its management and governance structures, which include the board of directors' and management's authority, responsibilities, and reporting. The Organization category evaluates the FMI's overarching objectives, and the ability of the FMI's board and management to implement them. This category also considers the relationships among the FMI's relevant stakeholders and their influence on the FMI's business strategy. Further, analysis under this category considers the independence and effectiveness of the FMI's internal audit function and its ability to inform the board and management about the robustness of the FMI's risk management and control processes. As a result, the Organization category contains two subcomponents, Board and Management Oversight, and Internal Audit. The FMI's assessment under these subcomponents is reflected in a single category rating.[1]

Board and Management Oversight

The Board and Management Oversight subcomponent addresses the organization and conduct of the FMI's board of directors and senior management. It assesses the structure and effectiveness of the FMI's legal and compliance risk monitoring and management framework. This rating evaluates how effectively the board of directors and senior management guide and manage the FMI, and ensure that the FMI operates in a safe and sound manner; specific considerations in this regard include management's responsiveness to supervisory concerns. This rating component also evaluates the board's effectiveness at establishing the FMI's objectives, strategy, and risk tolerances, and management's effectiveness at ensuring that the FMI's activities are consistent with them. Specific considerations in this regard include the board's effectiveness in setting strategic objectives, developing a risk-management framework, creating clear and responsive corporate governance structures, and establishing corporate risk tolerances. This rating also evaluates the effectiveness of the FMI's governance program for risk models and its use of independent validation mechanisms to validate the FMI's risk-management model methodologies and output.

Relevant statutes, regulations and guidance include—

- Regulation HH § 234.3(a)(1)–(3) (excluding (a)(2)(iv)(I))
- Regulations implementing the Bank Secrecy Act (BSA) [2] and sanctions programs administered by the Office of Foreign Assets Control (OFAC)
- PSR policy: Legal Basis (Principles for Financial Market Infrastructures (PFMI) 1), Governance (PFMI 2, excluding references to internal audit), Framework for Comprehensive Management of Risks (PFMI 3, excluding references to internal audit)

Internal Audit

The Internal Audit subcomponent reflects the ability and independence of the FMI's internal audit function to assess risk and to inform the board and management. An FMI should have an effective internal audit function with sufficient resources and independence from management to provide a rigorous and unbiased assessment of the FMI's risk profile and risk exposure, including financial and operational risk, as well as the effectiveness of risk management and controls. The Internal Audit subcomponent assesses the internal audit function's day-to-day management, including its annual risk assessment, audit program, quality of work papers, quality assurance, planning and reporting, and training.[3]

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[1] The *Board and Management Oversight* and the *Internal Audit* subcomponents are not individually rated; they represent matters examiners should consider when assigning the *Organization* category rating. Depending on the issues at the FMI, examiners should use their judgment in weighting each of these subcomponents in their assessment of the *Organization* category overall.

[2] The BSA is codified at 31 U.S.C. 5311 *et seq.*, 12 U.S.C. 1829b, and 12 U.S.C. 1951–1959. Federal Reserve supervised institutions that are subject to the BSA include state member banks (Regulation H, 12 CFR 208), bank holding companies (Regulation Y, 12 CFR 225), Edge and agreement corporations, and foreign banking organizations operating in the United States (Regulation K, 12 CFR 211). The U.S. Department of the Treasury's Financial Crimes Enforcement Network has published regulations implementing the BSA at 31 CFR Part X.

[3] The Internal Audit subcomponent does not assess the board's effectiveness at establishing and overseeing an internal audit function at the FMI;

Continued

Relevant regulations and guidance include—

- Regulation HH § 234.3(a)(2)(iv)(I)
- Audit guidance applicable to the FMI (for example, Institute of Internal Auditors, FFIEC, SR Letters, Bank for International Settlements, and ISACA)
- PSR policy: Governance (PFMI 2, as it pertains to internal audit), Framework for Comprehensive Management of Risks (PFMI 3, as it pertains to internal audit), Operational Risk (PFMI 17, as it pertains to internal audit)

Risk Management

The Risk Management category evaluates the effectiveness of the FMI's risk management, including the availability to the FMI of acceptable financial resources to contain and manage losses and liquidity pressures, and the FMI's ability to meet its obligations in the event of a participant's default. Further, the rating assesses whether the FMI has developed a risk-management framework that includes integrated plans for the FMI's recovery and orderly wind-down, and the viability of its capital plan. The rating also considers the FMI's ability and practices in safeguarding its own assets and those of its participants, and the FMI's ability to ensure those assets are readily available and convertible into cash with minimum losses. In addition, the Risk Management rating assesses the FMI's awareness, mitigation, or management of the material risks that its participants' customers and other FMIs indirectly introduce.

Relevant regulations and guidance include—

- Regulation HH § 234.3(a)(4)–(7), (14)–(16), (19)–(20)
- PSR policy: Credit risk (PFMI 4), Collateral (PFMI 5), Margin (PFMI 6), Liquidity risk (PFMI 7), Segregation and Portability (PFMI 14), General Business Risk (PFMI 15), Custody and Investment Risks (PFMI 16), Tiered Participation Arrangements (PFMI 19), and FMI Links (PFMI 20)

Settlement

Final settlement is the irrevocable and unconditional transfer of an asset or financial instrument, or the discharge of an obligation by an FMI or its participants in accordance with the underlying contract's terms. Settlement risk, which is the risk that settlement will not take place as expected, is a key risk that FMIs and their participants face. Failure to settle a transaction on time and in full can create liquidity and credit problems for an FMI or its participants, with potential systemic implications. This is especially true during a participant default event. Well-designed, clearly articulated, and effectively disclosed default management rules are imperative to maintaining market confidence in the event of a participant default.

The Settlement category focuses on the risk-management tools that an FMI uses to ensure settlement takes place as expected, and the default management procedures the FMI follows in the event of a participant default. The rating assesses the FMI's ability to provide clear and certain final settlement, and its ability to manage the risks related to money settlements and the delivery of physical assets. The rating also includes central securities depositories' abilities to safeguard the rights of securities issuers and holders, and to ensure the integrity of the securities issues that they hold in custody. Finally, this category includes assessing the adequacy of the FMI's participant default rules and procedures, and the steps that the FMI takes to ensure that it is prepared to execute them.

Relevant regulations and guidance include—

- Regulation HH § 234.3(a)(8)–(13)
- PSR Policy: Settlement Finality (PFMI 8), Money Settlements (PFMI 9), Physical Deliveries (PFMI 10), Central Securities Depositories (PFMI 11), Exchange-of-Value Settlement Systems (PFMI 12), and Participant Default Rules and Procedures (PFMI 13)

Operational Risk and IT

FMIs face significant operational and IT risks in their provision of post-trade services. Operational risk entails deficiencies in information systems, internal processes, and personnel, or disruptions from external events that may result in the reduction, deterioration, or breakdown of services provided by an FMI. FMIs are expected to ensure that, through the development of appropriate systems, controls, and procedures, their operations and IT infrastructure are reliable, secure, and have adequately scalable capacity. FMIs' information security practices and controls are expected to be strong and effective. FMIs should protect and secure the systems, media, and facilities that process and maintain information vital to their operations in the context of a continually changing threat landscape. Further, FMIs are expected to have robust business continuity plans that allow for the rapid recovery and timely resumption of critical operations. FMIs are expected to test and update these plans regularly.

The Operational Risk and IT category focuses on the FMI's operational reliability and its ability to support the safe and continuous functioning of the markets that it serves. This category considers the FMI's operational risk management framework and IT infrastructure, including the adequacy of the FMI's operational risk management governance, internal controls, physical and information security, data management, capacity management, and business continuity plan.

Relevant regulations and guidance include—

- Regulation HH § 234.3(a)(17)
- PSR Policy: Operational Risk (PFMI 17, excluding references to internal audit)
- Interagency Paper on Sound Practices to Strengthen Resilience of the U.S. Financial System
- FFIEC, relevant industry IT & cybersecurity guidance, and CPMI–IOSCO guidance supporting the PFMI.

Market Support, Access, and Transparency

FMIs should be designed and operated to meet the needs of their participants and the markets that they serve. Access to FMIs' services is often necessary for meaningful participation in the markets that they serve, and FMIs' efficiency and effectiveness can influence financial activity and market structure. Also, access to, and understanding of, relevant information about an FMI fosters confidence among participants and the public.

The Market Support, Access, and Transparency category focuses on the FMI's efforts to support the markets it serves, to ensure fair and open access to its services (while balancing the FMI's safety and efficiency), and to provide participants with the information necessary to understand the risks and responsibilities attendant with their participation in the FMI. Analysis under this category considers, among other things, the FMI's implementation of risk-based, objective participation requirements; its member monitoring framework; the efficiency with which it consumes resources in providing its services; and the adequacy of its disclosure of its rules, its key procedures, and its legal, governance, risk management, and operating framework.

Relevant regulations and guidance include—

- Regulation HH § 234.3(a)(18), (21)–(23)

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that is assessed in the *Board and Management Oversight* subcomponent.

- PSR policy: Access and Participation Requirements (PFMI 18), Efficiency and Effectiveness (PFMI 21), Communication Procedures and Standards (PFMI 22), Disclosure of Rules, Key Procedures, and Market Data (PFMI 23), Disclosure of Market Data by Trade Repositories (PFMI 24)

Category Ratings

FMIs receive a rating for each ORSOM category based on an evaluation of the FMI against that category's key attributes as described herein. Regulation HH prescribes risk-management standards for DFMUs for which the Board or another federal banking agency is the Supervisory Agency under Title VIII of the Dodd-Frank Act. Other FMIs subject to Federal Reserve supervision—for example, other DFMUs over which the Board has supervisory authority because they are members of the Federal Reserve System, and FMIs that are operated by the Federal Reserve Banks—are subject to the Federal Reserve Act and the expectations set out in the Federal Reserve's PSR policy. An FMI's rating should be consistent with the expectations set forth in Regulation HH, the PSR policy, and relevant supervisory guidance, such as SR letters and FFIEC guidance.[4] The rating scale ranges from 1 to 5, with a rating of 1 indicating the strongest performance and, therefore, the level of least supervisory concern. A rating of 5 indicates the most critically deficient level of performance and, therefore, the greatest level of supervisory concern. Importantly, an FMI's category rating should reflect supervisory judgment and expertise as to the materiality of any issues identified based on the resulting effect those issues have on the safety and soundness of the FMI, the growth of systemic risks, or the stability of the broader financial system.[5]

A common set of definitions for each rating level is applied across all of the ORSOM categories. These general definitions focus on broad supervisory interests, which are—

- the extent to which any issues identified, either individually or cumulatively, are issues of concern for the safety and soundness of the FMI or the stability of the broader financial system.
- the immediacy with which the FMI is expected to remedy the issues, and the extent to which close supervisory monitoring of the FMI's remediation efforts, or supervisory action, is needed.[6]

Supervisors may identify multiple issues with differing degrees of concern. In such cases, supervisors typically should assign the category a rating that reflects their judgment of the severity of the most serious concerns identified. For example, if a payment system meets the majority of supervisory standards for the Settlement category, but only partly observes the risk management standard pertaining to settlement finality, then, because of that issue's criticality to a payment system, the payment system's rating for the Settlement category should reflect its weaknesses with regard to that key risk management standard.

1: Strong

- Any issues identified, either individually or cumulatively, are not issues of concern with respect to the category's supervisory guidance. For example, the FMI observes all of the key risk management standards in Regulation HH or the PSR policy, as applicable.[7]
- The FMI can correct any issues identified in the normal course of business and focused supervisory monitoring of the FMI's remediation efforts is not needed.

2: Satisfactory

- Any issues identified, either individually or cumulatively, are not presently issues of concern with respect to the category's supervisory guidance, but may become so if left uncorrected. For example, the FMI either observes or broadly observes the key risk management standards in Regulation HH or the PSR policy, as applicable.
- The FMI can correct any issues identified in the normal course of business, but limited, focused supervisory monitoring of the FMI's remediation efforts may be needed.

3: Fair

- One or more issues identified, either individually or cumulatively, are issues of concern with respect to the category's supervisory guidance. For example, the FMI, at a minimum, broadly observes most of the key risk management standards in Regulation HH or the PSR policy, as applicable, but may partly observe some of them.
- The FMI should correct one or more of the issues of concern identified within a defined period, focused supervisory monitoring of the FMI's remediation efforts is likely needed, and supervisory action may be needed.

4: Marginal

- One or more issues identified, either individually or cumulatively, are substantial issues of concern with respect to the category's supervisory guidance. For example, the FMI only partly observes many key risk management standards in Regulation HH or the PSR policy, as applicable, and may not observe some of them.
- The FMI should correct one or more of the issues of concern identified immediately, focused supervisory monitoring of the FMI's remediation efforts is needed, and supervisory action is likely.

5: Unsatisfactory

- One or more issues identified, either individually or cumulatively, are critical and immediate issues of concern with respect to the category's supervisory guidance. For example, the FMI does not observe key risk management standards in Regulation HH or the PSR policy, as applicable.
- The FMI must correct one or more of the issues of concern identified immediately, and immediate supervisory action and monitoring of the FMI's remediation efforts are needed.

Composite Ratings

An FMI's composite rating indicates whether and to what extent the issues identified, in the aggregate, give cause for supervisory concern. Like the category ratings, an FMI's composite rating ranges from 1 to 5. A rating of 1 indicates the strongest performance and, therefore, the level of least supervisory concern, and a rating of 5 indicates a critically deficient level of performance and, therefore, the greatest level of supervisory concern. An FMI's composite rating should not represent a formulaic combination of its category ratings, such as an arithmetic average. Rather, the ratings definitions provide factors that supervisory staff should consider when viewing an FMI's performance against the totality of relevant regulations and supervisory guidance.

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[4] DFMUs subject to the jurisdiction of the Federal Reserve under Title VIII of the Dodd-Frank Act should adhere to, and will be assessed against, Regulation HH's provisions and any other regulation directly applicable to that DFMU, and any supervisory guidance would be applicable only insofar as it is consistent with Regulation HH and other directly applicable regulations.

[5] *See* Dodd-Frank Act Section 805, 12 U.S.C. 5464(b).

[6] FMIs are responsible for remedying supervisory concerns. Supervisory action in this context refers to the range of supervisory measures that relevant laws authorize the Federal Reserve to take. These include issuing a matter requiring attention or matter requiring immediate attention; entering into a memorandum of understanding with the FMI; or more severe enforcement action measures as authorized under Title VIII of the Dodd-Frank Act or other relevant laws.

[7] The applicable standards are based on the Federal Reserve's source of authority. DFMUs for which the Federal Reserve acts as the Supervisory Agency under Title VIII of the Dodd-Frank Act are subject to Regulation HH. Other FMIs subject to Federal Reserve supervision, for example, by virtue of being members of the Federal Reserve System, are subject to the Federal Reserve Act and the expectations set out in the Federal Reserve's PSR policy. The applicable standards in both Regulation HH and the PSR policy are based on the PFMI. The Board has stated that it does not intend for differences in language in the two documents to lead to inconsistent policy results.

1: Strong

- As reflected in its category ratings, an FMI with a composite rating of 1 is substantially sound in every respect and does not give cause for supervisory concern.
- Any issues identified do not reflect a pattern of risk management or governance failures and, either individually or cumulatively, are not issues of concern for the safety and efficiency of either the FMI or the markets that it supports.
- The FMI can correct any issues identified in the normal course of business and focused supervisory monitoring of the FMI's remediation efforts is not needed.

2: Satisfactory

- As reflected in its category ratings, an FMI with a composite rating of 2 is sound in most respects and does not presently give cause for supervisory concern.
- Any issues identified do not reflect a pattern of risk management or governance failures and, either individually or cumulatively, are not presently issues of concern for the safety and efficiency of either the FMI or the markets that it supports, but may become so if left uncorrected.
- The FMI can correct any issues identified in the normal course of business, but limited, focused supervisory monitoring of the FMI's remediation efforts may be needed.

3: Fair

- As reflected in its category ratings, an FMI with a composite rating of 3 is sound in many respects, but gives cause for some supervisory concern, and supervisory action may be necessary.
- Any issues identified, either individually or cumulatively, are issues of concern for the safety and efficiency of either the FMI or the markets that it supports.
- The FMI should correct one or more of the issues of concern identified within a defined period and focused monitoring of the FMI's remediation efforts is likely needed.

4: Marginal

- As reflected in its category ratings, an FMI with a composite rating of 4 is unsound in one or more respects and gives cause for substantial supervisory concern, which will likely lead to supervisory action.
- Any issues identified, either individually or cumulatively, are substantial issues of concern for the safety and efficiency of either the FMI or the markets that it supports.
- The FMI should correct one or more of the issues of concern identified immediately and focused supervisory monitoring of the FMI's remediation efforts is needed.

5: Unsatisfactory

- As reflected in its category ratings, an FMI with a composite rating of 5 is considered critically unsound and gives cause for substantial and immediate supervisory concern and action.
- Any issues identified, either individually or cumulatively, are critical and immediate issues of concern for the safety and efficiency of either the FMI or the markets that it supports.
- The FMI must correct one or more of the issues of concern identified immediately, and immediate supervisory action and monitoring of the FMI's remediation efforts are needed.

Administrative Law Matters

Regulatory Flexibility Act Analysis

Congress enacted the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to address concerns related to the effects of agency rules on small entities, and the Board is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide a final regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Board received no comments on its initial regulatory flexibility analysis regarding the supervisory rating system for FMIs. The rating system will apply to FMUs that are designated by the Financial Stability Oversight Council under Title VIII of the Dodd-Frank Act as systemically important, for which the Board is the Supervisory Agency, and which are subject to Regulation HH. In addition, the supervisory rating system for FMIs will apply to other DFMUs over which the Board has supervisory authority because they are members of the Federal Reserve System, and FMIs that are operated by the Federal Reserve Banks, pursuant to the PSR policy. Based on current information, none of the FMIs are "small entities" for purposes of the RFA, and so, the rating system likely will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). The following final regulatory flexibility analysis, however, has been prepared in accordance with 5 U.S.C. 604, based on current information.

1. *Statement of the need for, and objectives of, the rule.* The Board is implementing the ORSOM rating system in order to carry out its supervisory responsibilities regarding FMIs under Title VIII of the Dodd-Frank Act and other applicable law, as discussed above. As noted above, the ORSOM rating system is a supervisory tool that the Federal Reserve will use to provide a consistent internal framework for performing FMI assessments across the Federal Reserve's FMI portfolio, including DFMUs for which the Board is the Supervisory Agency pursuant to Title VIII, other FMIs that are members of the Federal Reserve System, and FMIs that are operated by the Federal Reserve Banks. The Federal Reserve will convey the annual ORSOM rating to a DFMU's management and board of directors. The rating system is designed to link supervisory assessments and messages to the regulations and guidance that form the foundation of the supervisory program, such as Regulation HH and the PSR policy.

2. *Significant issues raised by comments in response to the initial regulatory flexibility analysis.* The Board received no public comments in response to the initial regulatory flexibility act analysis, nor did it receive comments from the Chief Counsel for Advocacy of the Small Business Administration.

3. *Small entities affected by the rule.* Pursuant to regulations issued by the Small Business Administration (SBA) (13 CFR 121.201), a small entity includes an establishment engaged in (i) financial transaction processing, reserve and liquidity services, and/or clearinghouse services with an average annual revenue of $38.5 million or less (NAICS code 522320); (ii) securities and/or commodity exchange activities with an average annual revenue of $38.5 million or less (NAICS code 523210); and (iii) trust, fiduciary, and/or custody activities with an average annual revenue of $38.5 million or less (NAICS code 523991). Based on current information, the Board does not believe that any of the FMIs that would be subject to the ORSOM rating system would be small entities pursuant to the SBA regulation.

4. *Projected reporting, recordkeeping, and other compliance requirements.* The ORSOM rating system does not impose any reporting or recordkeeping requirements on the relevant FMIs.

Although the rating system reflects risk management standards set out in Regulation HH, the PSR policy, and other applicable rules and guidance, the ORSOM rating system itself does not impose any compliance requirements.

5. Steps to minimize significant economic impact on small entities consistent with the stated objectives of applicable statutes/discussion of significant alternatives. The rating system will not have an economic impact on small entities. The Board is not aware of any significant alternatives to the rating system that accomplish the objectives of reflecting the relevant risk management standards in the supervisory rating system.

Competitive Impact Analysis

As a matter of policy, the Board subjects all operational and legal changes that could have a substantial effect on payment system participants to a competitive impact analysis, even if competitive effects are not apparent on the face of the proposal. Pursuant to this policy, the Board assesses whether the changes "would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services" and whether any such adverse effect "was due to legal differences or due to a dominant market position deriving from such legal differences." If, as a result of this analysis, the Board identifies an adverse effect on the ability to compete, the Board then assesses whether the associated benefits—such as improvements to payment system efficiency or integrity—can be achieved while minimizing the adverse effect on competition.

DFMUs are subject to the supervisory framework established under Title VIII of the Dodd-Frank Act. At least one DFMU that is subject to Regulation HH competes with a similar service provided by the Reserve Banks. Under the Federal Reserve Act, the Board has general supervisory authority over the Reserve Banks, including the Reserve Banks' provision of payment and settlement services (Federal Reserve priced services). This general supervisory authority is much more extensive in scope than the authority provided under Title VIII over DFMUs. In practice, Board oversight of the Reserve Banks goes well beyond the typical supervisory framework for private-sector entities, including the framework provided by Title VIII.

The Board is committed to applying risk-management standards to the Reserve Banks' Fedwire Funds Service and Fedwire Securities Service that are at least as stringent as the applicable Regulation HH standards applied to DFMUs that provide similar services. The risk management and transparency expectations in part I of the PSR policy, which applies to the Federal Reserve priced services, are consistent with those in Regulation HH. The ORSOM rating system will be applied equally to both DFMUs subject to Regulation HH and to the other FMIs subject to the Board's authority, including the Federal Reserve priced services, subject to the PSR policy. Therefore, the Board does not believe the rating system will have any direct and material adverse effect on the ability of other service providers to compete with the Reserve Banks.

Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR part 1320, Appendix A.1), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a valid Office of Management and Budget (OMB) control number. The Board has reviewed this rating system and determined that it contains no collections of information.

By order of the Board of Governors of the Federal Reserve System, August 23, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–20517 Filed 8–25–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Gaylon M. Lawrence, Jr., Memphis, Tennessee,* to retain shares of Piggott Bankstock, Inc., and thereby indirectly retain control of Piggott State Bank, both in Piggott, Arkansas.

Board of Governors of the Federal Reserve System, August 23, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–20531 Filed 8–25–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *M&P Community Bancshares, Inc., 401(k) Employee Stock Ownership Plan;* to acquire additional shares of M&P Community Bancshares, Inc., for a total of ownership of up to 38 percent, and

thereby acquire shares of Merchants & Planters Bank, all in Newport, Arkansas.

Board of Governors of the Federal Reserve System, August 23, 2016.

Michele T. Fennell,

Assistant Secretary of the Board.

[FR Doc. 2016–20532 Filed 8–25–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090; Docket 2016–0053; Sequence 38]

Information Collection; Rights in Data and Copyrights

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights in data and copyrights.

DATES: Submit comments on or before October 25, 2016.

ADDRESSES: Submit comments identified by Information Collection 9000–0090 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0090" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0090". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0090" on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0090.

Instructions: Please submit comments only and cite Information Collection 9000–0090, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Gray, Procurement Analyst, at 703–795–6328 or email *charles.gray@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Subpart 27.4, Rights in Data and Copyrights is a regulation which concerns the rights of the Government and contractors with whom the Government contracts, regarding the use, reproduction, and disclosure of information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data, and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories:

(a) A provision which is to be included in solicitations where the offeror would identify any proprietary data it would use during contract performance, in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluating work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts should require this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause (52.227.14) outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there may rarely be any challenges. Thus, there is no burden on the public.

B. Annual Reporting Burden

Respondents: 944.

Responses per Respondent: 2.43.

Annual Responses: 2294.

Hours per Response: 1.0.

Total Burden Hours: 2294.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0090, Rights in Data and Copyrights, in all correspondence.

Dated: August 22, 2016.

Lorin S. Curit,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2016–20443 Filed 8–25–16; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0408]

Microbiology Data for Systemic Antibacterial Drugs—Development, Analysis, and Presentation; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance for industry entitled "Microbiology Data for Systemic Antibacterial Drugs—Development, Analysis, and Presentation." The purpose of this guidance is to assist sponsors in the development, analysis, and presentation of microbiology data during antibacterial drug development. This guidance finalizes the draft guidance of the same name issued on September 17, 2009.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2009–D–0408 for "Microbiology Data for Systemic Antibacterial Drugs—Development, Analysis, and Presentation; Guidance for Industry; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph G. Toerner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 22, Rm. 6244, Silver Spring, MD 20993–0002, 301–796–1400.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Microbiology Data for Systemic Antibacterial Drugs—Development, Analysis, and Presentation." The purpose of this guidance is to assist sponsors in the development, analysis, and presentation of microbiology data during antibacterial drug development. Microbiology data provide important information to guide clinical development of antibacterial drugs and guide clinicians on the use of an antibacterial drug for its intended indication.

This guidance finalizes the draft guidance issued on September 17, 2009

(74 FR 47804). After consideration of comments received in response to the draft guidance, the guidance was restructured to describe general approaches to microbiology data collection in the body of the guidance and to provide more specific recommendations in appendixes (*e.g.*, the format for microbiology data presentation and an example for sections of labeling that pertain to microbiology).

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the development, analysis, and presentation of microbiology data for systemic antibacterial drugs. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

1. This guidance provides recommendations on the type of information to include in submissions of the clinical microbiology section of investigational new drug applications (INDs) and new drug applications (NDAs) for systemic antibacterial drugs. The microbiology section of an NDA is required under 21 CFR 314.50(d)(4) and this information collection is approved under OMB control number 0910–0001. For INDs, this information is required under 21 CFR 312.23(a) and approved under OMB control number 0910–0014.

2. This guidance also recommends the types of data that should be submitted in a labeling supplement to update the microbiology information in approved labeling if an application holder chooses to update this information without relying on a standard recognized by FDA. The submission of labeling supplements is required under 21 CFR 314.70(b)(2)(v) and 201.56(a)(2) and this information collection is approved under OMB control numbers 0910–0001 and 0910–0572, respectively.

3. Appendix D of this guidance describes the content of the Microbiology subsection of labeling. This labeling is covered under 21 CFR 201.57(c)(13)(i) and the information collection is approved under OMB control number 0910–0572.

4. This guidance also references the guidance for industry entitled "Updating Labeling for Susceptibility Test Information in Systemic Antibacterial Drug Products and Antimicrobial Susceptibility Testing Devices" for updating labeling information. The information collection in this guidance has been approved under OMB control number 0910–0638.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20473 Filed 8–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–2496]

Agency Information Collection Activities; Proposed Collection; Comment Request; User Account Management Function for the Import Trade Auxiliary Communication System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information required to implement user account management function in FDA's Import Trade Auxiliary Communication System (ITACS). Secure user accounts will allow import trade users to receive Notices of FDA Action and requests for specific information via email or via download within ITACS.

DATES: Submit either electronic or written comments on the collection of information by October 25, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–2496 for "Agency Information Collection Activities; Proposed Collection; Comment Request; User Account Management Function for the Import Trade Auxiliary Communication System." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- *Confidential Submissions*—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North, 10A63, 11601 Landsdown St., North Bethesda, 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Account Management Function for the Import Trade Auxiliary Communication System—OMB Control Number 0910–NEW

ITACS currently provides the import trade community with four functions: The ability to check the status of FDA-regulated entries and lines, the ability to submit entry documentation electronically, the ability to electronically submit the location of goods for those lines targeted for FDA physical examination, and the ability to check estimated laboratory analysis completion dates. No user login accounts are currently necessary to access these functions; all that is necessary is a valid customs entry number that has been successfully transmitted to FDA.

FDA has developed ITACS user account management functionality. Implementation of this functionality would allow members of the import trade community to create and manage secure user accounts in ITACS, which would enable FDA to distribute Notices of FDA Action to users electronically via email (rather than regular mail), enable users to download Notices of FDA Action from within ITACS, and allow users to view in ITACS the details of specific information requests which are currently delivered via hard copy Notices of FDA Action. ITACS user account management functionality would also allow for potential future ITACS enhancements, requested by the import trade community, that require user authentication.

To create a secure user account for ITACS via the user account management function, a person would have to enter basic information such as the person's name, their employer's name, a contact email address, an account password, etc., into ITACS via the user account management function interface.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Creation of ITACS account	5,000	1	5,000	0.5 (30 minutes)	2,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–20472 Filed 8–25–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on July 1, 2016, through July 31, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: August 18, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Joel Flores, San Antonio, Texas, Court of Federal Claims No: 16–0788V.
2. Katie Tambouris, Manchester, New Hampshire, Court of Federal Claims No: 16–0790V.
3. Cassie Keener, Fort Worth, Texas, Court of Federal Claims No: 16–0791V.
4. Manya Cetlin-Salter, Exeter, New Hampshire, Court of Federal Claims No: 16–0792V.
5. Gabrielle Salomone, Philadelphia, Pennsylvania, Court of Federal Claims No: 16–0795V.
6. Tara Hurley, Pawtucket, Rhode Island, Court of Federal Claims No: 16–0797V.
7. Malka Nussbaum on behalf of S. N., Queens, New York, Court of Federal Claims No: 16–0799V.
8. Donna Deaton, Gibsonville, North Carolina, Court of Federal Claims No: 16–0802V.
9. Fredric C. Thompson, Gray, Maine, Court of Federal Claims No: 16–0803V.
10. Sharlee Funai, Wailuku, Hawaii, Court of Federal Claims No: 16–0807V.
11. Dolores Soltero Arias, Auburn, Washington, Court of Federal Claims No: 16–0808V.
12. Luisa Gomes, Dorchester, Massachusetts, Court of Federal Claims No: 16–0809V.
13. Linda Saucedo, Indialantic, Florida, Court of Federal Claims No: 16–0810V.
14. Tasha Loyd on behalf of C. L., Tampa, Florida, Court of Federal Claims No: 16–0811V.
15. Rebekah R. Codde on behalf of I. R. H., Sacramento, California, Court of Federal Claims No: 16–0812V.
16. Maureen Revaitis and Chris Revaitis on behalf of J. R. Marlton, New Jersey, Court of Federal Claims No: 16–0813V.
17. Mary Butler, San Mateo, California, Court of Federal Claims No: 16–0814V.
18. David Palmieri, Galloway, New Jersey, Court of Federal Claims No: 16–0818V.
19. Connor Toes, Phoenix, Arizona, Court of

Federal Claims No: 16–0819V.

20. Robert Chirempes, Chicago, Illinois, Court of Federal Claims No: 16–0820V.
21. Christopher Thornton, St. Louis, Missouri, Court of Federal Claims No: 16–0822V.
22. Dan Wojchiechowski, St. Louis, Missouri, Court of Federal Claims No: 16–0823V.
23. Sherika English, Raleigh, North Carolina, Court of Federal Claims No: 16–0825V.
24. Robert Brett Maxwell, Atlanta, Georgia, Court of Federal Claims No: 16–0827V.
25. Vicki Carey on behalf of C. C., Phoenix, Arizona, Court of Federal Claims No: 16–0828V.
26. Susan J. Swanson, Spokane, Washington, Court of Federal Claims No: 16–0831V.
27. Brent Owens, Wilmington, North Carolina, Court of Federal Claims No: 16–0832V.
28. Hannah Diedrich, Annapolis, Maryland, Court of Federal Claims No: 16–0833V.
29. Pradeep Sharma, Birmingham, Alabama, Court of Federal Claims No: 16–0834V.
30. Sue A. Little, Fort Collins, Colorado, Court of Federal Claims No: 16–0836V.
31. Tina Nizza, York, Pennsylvania, Court of Federal Claims No: 16–0838V.
32. Kimberly Miller, Shelby Township, Michigan, Court of Federal Claims No: 16–0841V.
33. Rachel Nolt, Columbus, Georgia, Court of Federal Claims No: 16–0842V.
34. Thomas Winiesdorffer, Novi, Michigan, Court of Federal Claims No: 16–0843V.
35. Paul Smith, Dallas, Texas, Court of Federal Claims No: 16–0844V.
36. Gerald O'Connor, Chicago, Illinois, Court of Federal Claims No: 16–0846V.
37. Deborah Aldora, Effingham, Illinois, Court of Federal Claims No: 16–0847V.
38. Holly D. Patel, Hertfordshire, International Address, Court of Federal Claims No: 16–0848V.
39. Robert Hart, Chicago, Illinois, Court of Federal Claims No: 16–0849V.
40. Carrie Brazelton, Washington, District of Columbia, Court of Federal Claims No: 16–0851V.
41. Amy Carter on behalf of A. C., Wellesley Hills, Massachusetts, Court of Federal Claims No: 16–0852V.
42. Leslie Dobbins, Ocean Springs, Mississippi, Court of Federal Claims No: 16–0854V.
43. Kathryn N. Lake on behalf of J. M., Red Bluff, California, Court of Federal Claims No: 16–0856V.
44. Brenda Smith, Atlanta, Georgia, Court of Federal Claims No: 16–0858V.
45. Johana Marini, Sanford, Florida, Court of Federal Claims No: 16–0859V.
46. Michele Meadows, Poplarville, Mississippi, Court of Federal Claims No: 16–0861V.
47. Charles Davis, Norristown, Pennsylvania, Court of Federal Claims No: 16–0862V.
48. Isaac P. Jones, New York, New York, Court of Federal Claims No: 16–0864V.
49. Paola Freyre, Miami, Florida, Court of Federal Claims No: 16–0866V.
50. Kay Tipps and Cathell Tipps on behalf of K. T., Dallas, Texas, Court of Federal Claims No: 16–0867V.
51. Vacilis Kollias, Palo Alto, California, Court of Federal Claims No: 16–0868V.
52. Steven Fenn, Minneapolis, Minnesota, Court of Federal Claims No: 16–0873V.
53. Bryan Brutsch, Denver, Colorado, Court of Federal Claims No: 16–0874V.
54. Jon Martin, Henderson, Nevada, Court of Federal Claims No: 16–0875V.
55. Patricia Crowding, Dresher, Pennsylvania, Court of Federal Claims No: 16–0876V.
56. Marion Kitty, New Britain, Pennsylvania, Court of Federal Claims No: 16–0877V.
57. Douglas Kelly, Glendale, Colorado, Court of Federal Claims No: 16–0878V.
58. Lillian Barna, Punta Gorda, Florida, Court of Federal Claims No: 16–0879V.
59. Ralph Parmer, Barberton, Ohio, Court of Federal Claims No: 16–0880V.
60. David Prokopchuk, Houston, Texas, Court of Federal Claims No: 16–0881V.
61. Karen Garrett, Huntsville, Alabama, Court of Federal Claims No: 16–0882V.
62. Sean Miller and April Miller on behalf of Azyriah E. , MillerLincoln, Nebraska, Court of Federal Claims No: 16–0883V.
63. Alex Bechel and Tess Bechel on behalf of G. J. B., Lexington, Kentucky, Court of Federal Claims No: 16–0887V.
64. Nancy Day, Catonsville, Maryland, Court of Federal Claims No: 16–0888V.
65. Melissa Green-Heck, Boston, Massachusetts, Court of Federal Claims No: 16–0889V.
66. Yolanda Valdez, Santa Ana, California, Court of Federal Claims No: 16–0890V.
67. James Glover, Washington, District of Columbia, Court of Federal Claims No: 16–0891V.
68. Kathleen Kunka, Cortland, Ohio, Court of Federal Claims No: 16–0892V.
69. Sam Howard, Washington, District of Columbia, Court of Federal Claims No: 16–0894V.
70. David Fultz, Washington, District of Columbia, Court of Federal Claims No: 16–0895V.
71. Catherine Gonzales, Washington, District of Columbia, Court of Federal Claims No: 16–0896V.
72. Lisa Webb, Dresher, Pennsylvania, Court of Federal Claims No: 16–0897V.
73. Monica Miller on behalf of G. M., Memphis, Tennessee, Court of Federal Claims No: 16–0898V.
74. Phyllis Blanda, Las Vegas, Nevada, Court of Federal Claims No: 16–0899V.
75. Diane Johnson, Las Vegas, Nevada, Court of Federal Claims No: 16–0900V.
76. Richard Schussler, Las Vegas, Nevada, Court of Federal Claims No: 16–0901V.
77. Jerry Banks, Sarasota, Florida, Court of Federal Claims No: 16–0902V.
78. Ramonita Burgos Cancel on behalf of M. R., Boston, Massachusetts, Court of Federal Claims No: 16–0903V.
79. John Roberts Phillips, San Mateo, California, Court of Federal Claims No: 16–0906V.
80. Eloise M. Viater, Littleton, Colorado, Court of Federal Claims No: 16–0907V.
81. Edward Rodier, Saybrook, Connecticut, Court of Federal Claims No: 16–0908V.

[FR Doc. 2016–20519 Filed 8–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health (NACMH).

Dates and Times: November 2, 2016, 8:30 a.m. to 5:00 p.m., November 3, 2016, 8:30 a.m. to 5:00 p.m.

Place: Hotel Encanto de Las Cruces, 705 South Telshor Boulevard, Las Cruces, New Mexico 88011, Telephone: 575–522–4300, Fax: 575–521–4707.

Status: The meeting will be open to the public.

Purpose: The purpose of the meeting is to discuss services and issues related to the health of migratory and seasonal agricultural workers and their families and to formulate recommendations for the Secretary of the Department of Health and Human Services.

SUPPLEMENTARY INFORMATION: Members of the public interested in providing comments or questions to committee members should contact the Designated Federal Officer in advance.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on issues impacting agricultural workers, including the status of agricultural worker health at the local and national levels. In addition, the Council will hold a public hearing where migratory and seasonal agricultural workers and community health workers will testify regarding matters affecting the health of migratory and seasonal agricultural workers. This hearing is scheduled for Thursday, November 3, 2016, from 9:30 a.m. to 12:30 p.m. at Hotel Encanto de Las Cruces. Agenda items are subject to change.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below at least 10 days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Esther Paul, Designated Federal Officer, NACMH, Office of Policy and Program Development, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane, 16N38B, Maryland 20857; phone number: (301) 594–4300.

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–20533 Filed 8–25–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee and Subcommittee Meetings.

Dates and Times: Tuesday, September 27, 2016: 8:30 a.m.–5:00 p.m.—Population Health Subcommittee Workshop; Wednesday, September 28, 2016: 9:00 a.m.–5:30 p.m.—Full Committee Meeting; Thursday, September 29, 2016; 8:15 a.m.–5:00 p.m.—Full Committee Meeting.

Place: The public workshop on September 27, 2016 will be held at the Marriott Courtyard Washington, 1325 2nd Street NE., Washington, DC 20002. The public meeting on September 28 and September 29 will be held at the U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 705–A, 200 Independence Avenue SW., Washington, DC 20024.

Status: Open.

Purpose: On September 27, 2016, the Population Health Subcommittee will hold a workshop, Using Sub-county Data to Promote Multi-sector Approaches for Community Health and Well-being: Identifying Gaps and Opportunities to help NCVHS advance recommendations to HHS in three areas: (1) Enhance public/private collaboration to increase availability of sub-county level data; (2) improve HHS data collection to focus on sub-county data; and (3) better align federal small area data generation initiatives. Workshop participants will include leaders of multi-sectoral partnerships focused on sub-county health and well-being improvement projects, key staff of federal and statistical agencies, and scholars, data scientists, and those with special interest in data-centered approaches to improving community health and well-being.

At the September 28–29, 2016 meeting the Committee will hear presentations and hold discussions on several health data policy topics. The Committee will receive updates from the Department, including from the Office of the National Coordinator and the Centers for Medicare and Medicaid Services. The Committee will discuss and take action on three items: (1) A report from NCVHS's ACA Review Committee that will focus on findings from its June 2015 hearing on Adopted Transaction Standards, Operating Rules, Code Sets & Identifiers; (2) a recommendation letter created from testimonies heard at the Minimum Necessary hearing held in June 16, 2016 by the Subcommittee on Privacy, Confidentiality and Security; and (3) a recommendation letter based on the June 17, 2016 hearing on Claims-based Databases for Policy Development and Evaluation. In addition, the Committee will discuss the future of vital statistics data with a briefing from NCHS's Division of Vital and Health Statistics. Subcommittees of the NCVHS will finalize action items for full Committee approval on day two of the meeting and plan for future initiatives. The Committee will further review its strategic plan for 2016 and all Subcommittees will report on work plans and next steps.

After the plenary session adjourns, the Work Group on HHS Data Access and Use will continue strategic discussions on building a framework for guiding principles for data access and use.

Contact Person for More Information: Substantive program information may be obtained from Rebecca Hines, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4715. Summaries of meetings and a roster of committee members are available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda and information for remote audio access to the meetings will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 12, 2016.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–20512 Filed 8–25–16; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria; Correction

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice; correction.

SUMMARY: The Department of Health and Human Services published a document in the **Federal Register** of August 18, 2016, containing language indicating that a meeting is tentatively scheduled to be held of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council) on September 19, 2016. The **DATES AND TIMES** section contained incorrect language.

FOR FURTHER INFORMATION CONTACT: Ayah Wali by email at *CARB@hhs.gov.*

Correction

In the **Federal Register** of August 18, 2016, Vol. 81, No. 160, on page 55205, in the second column, **DATES AND TIMES**, correct to read:

DATES AND TIMES: The meeting is scheduled to be held on September 19, 2016, from 12:30 p.m. to 5:30 p.m. ET (times are tentative and subject to change). The confirmed times and agenda items for the meeting will be posted on the Web site for the Advisory Council at *http://www.hhs.gov/ash/carb/* when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than September 14, 2016; public attendance at the meeting is limited to the available space.

Dated: August 22, 2016.

Bruce Gellin,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Deputy Assistant Secretary for Health.

[FR Doc. 2016–20524 Filed 8–25–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on the Maternal Immunizations Working Group Phase II's Draft Report and Draft Recommendations for Overcoming Barriers and Identifying Opportunities for Developing Maternal Immunizations for Consideration by the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (§ 2105) (42 U.S. Code Section 300aa–5). Its purpose is to advise and make recommendations to the Director of the National Vaccine Program on matters related to the program's responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services (HHS) as the Director of the National Vaccine Program. The National Vaccine Program Office (NVPO) is located within the Office of the Assistant Secretary for Health (OASH), Office of the Secretary, U.S. Department of Health and Human Services (HHS). The NVPO provides leadership and fosters collaboration among the various federal agencies involved in vaccine and immunization activities. The NVPO also provides management and support services for the National Vaccine Advisory Committee (NVAC). The NVAC advises and makes recommendations to the ASH in his/her capacity as the Director of the National Vaccine Program on matters related to the program's responsibilities.

Recognizing the importance and impact of maternal immunizations on public health, the ASH charged the NVAC in June 2012 with reviewing the state of maternal immunizations and existing best practices to identify programmatic gaps and/or barriers to the implementation of current recommendations regarding maternal immunization. The NVAC established the Maternal Immunization Working Group (MIWG) in August 2012 to conduct these assessments and provide recommendations for overcoming any identified barriers.

Through a series of teleconferences, electronic communications, and public discussions during the NVAC meetings, the working group identified a number of draft recommendations for consideration by the NVAC. These recommendations represent opportunities for developing and licensing new vaccines for pregnant women. The draft report and draft recommendations from the working group will inform NVAC deliberations as the NVAC finalizes their recommendations for transmittal to the ASH.

On behalf of NVAC, NVPO is soliciting public comment on the draft report and draft recommendations from a variety of stakeholders, including the general public, for consideration by the NVAC as they develop their final recommendations to the ASH. It is anticipated that the draft report and draft recommendations, as revised with consideration given to public comment and stakeholder input, will be presented to the NVAC for adoption in September 2016 at the quarterly NVAC meeting.

DATES: Comments for consideration by the NVAC should be received no later than 5:00 p.m. EDT on September 9, 2016.

ADDRESSES: (1) The draft report and draft recommendations are available on the web at *http://www.hhs.gov/nvpo/nvac/index.html.*

(2) Electronic responses are preferred and may be addressed to: *nvpo@hhs.gov.*

(3) Written responses should be addressed to: National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 733G.5, Washington, DC 20201, Attn: HHS Maternal Immunizations c/o Dr. Karin Bok.

FOR FURTHER INFORMATION CONTACT: Karin Bok, MS, Ph.D., National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 690–1191; fax (202) 260–1165; email *Karin.Bok@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Maternal immunizations have been an effective strategy to protect both the mother and the young infant against vaccine-preventable diseases. However, significant barriers remain that prevent the development and licensing of additional vaccines for use in maternal immunization strategies. Some of those barriers include ethics and policy considerations about including pregnant women in clinical research, the need for continued support of pre-clinical and clinical research on immunity, the impact and safety of immunizations during pregnancy, and educating obstetrical providers about the benefits of immunizations during pregnancy and the importance of including pregnant women in clinical research in order to provide the highest quality of healthcare.

HHS recognized the need to address these barriers and subsequently charged the NVAC with making recommendations that would address the problem. The NVAC separated the task into two sections as it was first necessary to address and understand the demand for maternal immunizations in order to then address the challenges in developing maternal immunizations. The MIWG Phase I focused on understanding the demand for maternal immunization programs by identifying existing patient and provider barriers to maternal immunization, which addressed the first part of the charge. Then, the MIWG Phase II focused on the second part of the charge, which was to identify barriers to and opportunities for developing vaccines for pregnant women and to make recommendations to overcome these barriers. Through a series of teleconferences, electronic communications, and public discussions during the NVAC meetings, the working group identified a number of draft recommendations. These recommendations were categorized into four priority areas that represent opportunities for developing and licensing new vaccines for pregnant women. These four categories include:

Focus Area 1: Ethical Issues
Focus Area 2: Policy Issues
Focus Area 3: Pre-Clinical and Clinical Research Issues
Focus Area 4: Provider Education and Support Issues

Within each focus area the NVAC report details key recommendations to overcoming challenges in these areas. The NVAC report also provides the rationale for these recommendations and input on how the ASH might support HHS activities in these areas.

II. Request for Comment

NVPO, on behalf of the NVAC MIWG Phase II, requests input on the draft report and draft recommendations. In addition to general comments on the draft report and draft recommendations, NVPO is seeking input on efforts and/or barriers to maternal immunizations not presented in the report where HHS efforts could advance maternal immunization efforts. Please limit your comments to six (6) pages.

III. Potential Responders

HHS invites input from a broad range of stakeholders including individuals and organizations that have interests in maternal immunization efforts and the role of HHS in advancing those efforts.

Examples of potential responders include, but are not limited to, the following:

—General public;
—advocacy groups, non-profit organizations, and public interest organizations;
—academics, professional societies, and healthcare organizations;
—public health officials and immunization program managers;
—obstetrical care provider groups including all physician and non-physician providers that administer healthcare services to pregnant women, including pharmacists; and
—representatives from the private sector.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written submissions should not exceed six (6) pages. Please do not send proprietary, commercial, financial, business, confidential, trade secret, or personal information.

Dated: August 16, 2016.

Bruce Gellin,

Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2016–20525 Filed 8–25–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R18 and R34.

Date: September 15, 2016.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies (R01).

Date: September 15, 2016.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7111, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: September 19, 2016.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–13–228: Biomarkers for Diabetes, Digestive, Kidney and Urologic Diseases using NIDDK Biorepository Samples (R01).

Date: September 21, 2016.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–16–126: High Impact, Interdisciplinary Science in DDK Research Areas (RC2)–CKD.

Date: September 26, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–15–067: NIDDK Multi-Center Clinical Study Cooperative Agreement (U01): CKD and Mineral Bone Disorders in Children.

Date: September 27, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7349, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20446 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies.

Date: September 9, 2016.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–8886, *sanoviche@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK DEM Fellowship Grant Applications Review.

Date: October 3, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carol J. Goter-Robinson, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7347, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–15–067: NIDDK Multi-Center Clinical Study Cooperative Agreement (U01).

Date: October 3, 2016.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–16–002: Understanding Barriers and Facilitators to Type 1 Diabetes Management in Adults.

Date: October 6, 2016.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–7682, *campd@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK–KUH-Fellowship Review SEP.

Date: October 7, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 W Kinzie Street, Chicago, IL 60654.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK–DDK–D Member Conflict SEP.

Date: October 7, 2016.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kinzie Hotel, 20 W Kinzie Street, Chicago, IL 60654.

Contact Person: Xiaodu Guo, MD, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20445 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing and/or co-development in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing and/or co-development.

ADDRESSES: Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702.

FOR FURTHER INFORMATION CONTACT: Information on licensing and co-development research collaborations, and copies of the U.S. patent applications listed below may be obtained by contacting: Attn. Invention Development and Marketing Unit, Technology Transfer Center, National Cancer Institute, 9609 Medical Center Drive, Mail Stop 9702, Rockville, MD 20850–9702, Tel. 240–276–5515 or email *ncitechtransfer@mail.nih.gov*. A signed Confidential Disclosure Agreement may be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows.

Title of invention:

Detection of Colorectal Cancer Using Two Heme-Related Molecules in Human Feces.

Description of Technology:

Mortality from colorectal cancer (CRC) can be reduced by detecting the cancer or its precursor, colorectal adenoma (CRA), so that it can be removed at an early stage. Current tests involve screening stool specimens for blood, especially for hemoglobin. The fecal immunochemical test (FIT) for hemoglobin is positive in stool for about 60% of early-stage and 85% of advanced CRC cases, with a false-positive rate of less than 10%. Assays with better accuracy are still needed.

The subject technology is a novel assay that detects the presence or absence of one or both of two heme-related peptides, X–18565 and X–19549 in stool samples. The presence of one, and especially both, of these peptides within the stool sample indicates a high likelihood that CRC or CRA is present within the patient. X–18565 was detected in 67% of CRC cases and the specificity of X–18565 was 99%, as it was detected in only 1% of control patients who did not have CRC (*e.g.*, false positives). X–19549 was detected in 48% of CRC cases and the specificity of X–19549 was 97%, as it was detected in only 3% of controls patients who did not have CRC (*e.g.*, false positives). The absence of both X–18565 and X–19549 from the stool sample (or extract) indicates a greater than 95% likelihood that CRC or CRA is not present within the patient from which the stool sample is obtained. The assay can be performed on fresh or frozen samples.

Potential Commercial Applications:

- Diagnostic for colorectal cancer.

Value Proposition:

- Assay has high specificity.
- Fresh and frozen samples can be utilized by this assay.

Development Stage:

Pre-clinical (*in vivo* validation).

Inventor(s):

James J. Goedert (NCI) and Rashmi Sinha (NCI).

Intellectual Property:

HHS Reference No. E–198–2014/0–PCT–02.

International PCT Application No. PCT/US2015/038299 (HHS Reference No. E–198–2014/0–PCT–02) filed June 29, 2015 entitled, "Detection of Colorectal Cancer with Two Novel Heme-Related Molecules in Human Feces."

Publications:

1. J.J. Goedert *et al.* Fecal Metabolomics: Assay Performance and Association with Colorectal Cancer. Carcinogenesis. 2014 Sep;35(9):2089–96. [PMID: 25037050].

Collaboration Opportunity

The NCI seeks licensing or co-development collaborations the would enable eventual commercialization of the diagnostic technology.

Contact Information

Requests for copies of the patent application or inquiries about licensing, research collaborations, and co-development opportunities should be sent to John D. Hewes, Ph.D., email: *john.hewes@nih.gov.*

Dated: August 17, 2016.

John D. Hewes,

Technology Transfer Specialist, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2016–20444 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 15, 2016.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report from the Institute Director, other Institute Staff and scientific presentation.

Place: The William F. Bolger Center, Franklin Building, Classroom 15/16, 9600 Newbridge Drive, Potomac, MD 20854.

Closed: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: The William F. Bolger Center, Franklin Building, Classroom 15/16, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: David T. George, Ph.D., Acting Associate Director, Office of Research Administration, National Institute of Biomedical Imaging, and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/NACBIB/NACBIB.htm,* where an agenda and any additional information for the meeting will be posted when available.

Dated: August 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20437 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Zika R21 Rapid Review.

Date: September 21, 2016.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephanie L Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 22, 2016.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20438 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

Date: September 27, 2016.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Cruz, Ph.D., Scientific Review Officer, Program Management & Operations Branch, DEA/SRP RM 3E71, National Institutes of Health, NIAID, 5601 Fishers Lane, Rockville, MD 20852, 301–761–3100, *AnnMarie.Cruz@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *August 22, 2016.*

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20440 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: September 28, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Room 2H200AB, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Vasundhara Varthakavi, DVM, Ph.D., Scientific Review Officer Scientific Review Program, Division of Extramural Activities, Room 3E70, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5020, *varthakaviv@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *August 22, 2016.*

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20441 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; MSM Program Review (2017/01).

Date: October 24, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, (301) 451–4773, *sukharem@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Health Disparity SBIR Review (2017/01).

Date: October 26, 2016.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; T32–R25 Training Review Meeting (2017/01).

Date: November 7, 2016.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, 6707 Democracy Blvd., Suite 959, Democracy Two, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov.*

Dated: August 22, 2016.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20447 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Mechanisms of Membrane Transport

Date: September 26–27, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Injury and Neurovascular Pathologies Study Section.

Date: September 26–27, 2016.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: September 26–27, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Riverwalk Marriott, 207 N. St Mary's Street, San Antonio, TX 78205.

Contact Person: Jacinta Bronte-Tinkew, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biochemistry and Biophysics of Membranes.

Date: September 27, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: C-L Albert Wang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7806, Bethesda, MD 20892, 301–435–1016, *wangca@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 23, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20557 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Rapid Assessment of Zika Virus (ZIKV) Complications (R21).

Date: September 20–21, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Program, Division of Extramural Activities, Room 3F40B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 22, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–20439 Filed 8–25–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 18, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2016–20138 Filed 8–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5962–N–01]

Fair Market Rents for the Housing Choice Voucher Program, Moderate Rehabilitation Single Room Occupancy Program and Other Programs Fiscal Year 2017

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Fiscal Year (FY) 2017 Fair Market Rents (FMRs).

SUMMARY: Today's notice announces the FY 2017 Fair Market Rents (FMRs) for all areas that reflect the estimated 40th and 50th percentile rent levels trended to April 1, 2017. The Housing Opportunities Through Modernization Act of 2016 (HOTMA) (Pub. L. 114–201, approved July 29, 2016) revises the procedure by which HUD publishes its annual FMRs. Specifically, HUD is no longer required to publish proposed FMRs for comment in the **Federal Register**. Rather, HUD may post the FMRs on HUD's Web site and announce such posting by notice published in the

Federal Register. In addition, HOTMA provides that HUD's FMRs shall be effective no earlier than 30 days after the date of the publication of HUD's **Federal Register** notice but that public housing agencies (PHAs) and other interested parties may comment on the FMR and request revevaluation of FMRs in a jurisdiction before such FMRs become effective. This notice announces that HUD's FY 2017 FMRs are available at *www.huduser.gov* and will take effect as stated in the **DATES** section of this notice unless interested parties request reevaluation of a their FMRs by September 26, 2016. HOTMA also requires HUD to publish proposed material changes to the methodology for comment. This notice also announces that HUD is not changing the methodology for calculating the FY 2017 FMRs estimates from that used to determine the FY 2016 FMRs. This notice, however, requests public comments on defining the scope of material changes that will trigger notice and comment in future calculation of FMRs.

The FY 2017 FMRs announced in this notice are based on "5-year" data collected by the American Community Survey (ACS) from 2010 through 2014. HUD updated the 5-year data with "one-year" 2014 ACS data for areas where statistically valid one-year ACS data is available. HUD continues to use ACS data in different ways according to the statistical reliability of rent estimates. HUD uses actual and forecast Consumer Price Index (CPI) rent and utility price indices to further update the ACS-derived rents to the middle of the FY 2017 fiscal year. The FY 2017 FMRs continue to use the February 28, 2013, OMB metropolitan area definitions. As noted above, the FY 2017 FMRs are calculated in the same manner used to calculate of the FY 2016 FMRs with the only differences being the use of updated data.

HUD notes that the only area for which HUD announces Small Area FMRs is the Dallas, TX HUD Metro FMR Area. The Small Area FMR Demonstration project with 5 PHA participants concludes on September 30, 2016. The 5 PHAs that participated in the demonstration may continue to be able set their housing choice voucher payment standards based on Small Area FMRs, as discussed in this notice.

DATES: *Comment Due Date:* September 26, 2016. *Effective Date:* October 1, 2016.

ADDRESSES: HUD invites interested persons to submit comments regarding the FMRs and requests for reevaluation of the FY 2017 FMRs to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410–0001. Communications must refer to the above docket number and title and should contain the information specified in the "Request for Comments" and "Requests for FMR Reevaluations" sections below. There are two methods for submitting public comments and reevaluation requests.

1. Submission of Comments or Reevaluation Requests by Mail. Comments or requests for reevaluation may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by mail often results in delayed delivery. To ensure timely receipt of comments or reevaluation requests, HUD recommends that comments or requests submitted by mail be submitted at least two weeks in advance of the deadline. HUD will make all comments or reevaluation requests received by mail available to the public at *http://www.regulations.gov/.*

2. Electronic Submission of Comments or Reevaluation Requests. Interested persons may submit comments or reevaluation requests electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments or reevaluation requests electronically. Electronic submission of comments or reevaluation requests allows the commenter maximum time to prepare and submit a comment or reevaluation request, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments or reevaluation requests submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters or reevaluation requestors should follow instructions provided on that site to submit comments or reevaluation requests electronically.

Note: To receive consideration as public comments or reevaluation requests, comments or requests must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments or Reevaluation Requests. Facsimile (FAX) comments or requests for FMR reevaluation are not acceptable.

Public Inspection of Public Comments and Reevaluation Requests. All properly submitted comments and reevaluation requests and communications regarding this notice submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments and reevaluation requests must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments and reevaluation requests submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop FMRs or a listing of all FMRs, please call the HUD USER information line at 800–245–2691 or access the information on the HUD USER Web site *http://www.huduser.gov/portal/datasets/fmr.html.* FMRs are listed at the 40th or 50th percentile in Schedule B. For informational purposes, 40th percentile rents for the areas with 50th percentile FMRs will be provided in the HUD FY 2017 FMR documentation system at *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html&data=fmr17* and 50th percentile rents for all FMR areas will be published at *http://www.huduser.gov/portal/datasets/50per.html.*

Questions related to use of FMRs or voucher payment standards should be directed to the respective local HUD program staff. Questions on how to conduct FMR surveys may be addressed to Marie L. Lihn or Peter B. Kahn of the Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research at HUD headquarters [451 7th Street SW., Room 8208, Washington, DC 20410]; telephone number 202–402–2409 (this is not a toll-free number), or they may be reached at *emad-hq@hud.gov.* Persons with hearing or speech impairments may access HUD numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Electronic Data Availability. This **Federal Register** notice will be available electronically from the HUD User page at *https://www.huduser.gov/portal/datasets/fmr.html.Federal Register* notices also are available electronically from *https://www.federalregister.gov/*

the U.S. Government Printing Office Web site. Complete documentation of the methods and data used to compute each area's FY 2017 FMRs is available at *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html&data=fmr17.* FY 2017 FMRs are available in a variety of electronic formats at *https://www.huduser.gov/portal/datasets/fmr.html.* FMRs may be accessed in PDF format as well as in Microsoft Excel. Small Area FMRs based on FY 2017 Metropolitan Area Rents for the Dallas, TX HUD Metro FMR Area are available in Microsoft Excel format at the same web address. Small Area FMRs for all other metropolitan FMR areas are available at: *http://www.huduser.gov/portal/datasets/fmr/smallarea/index.html.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 8 of the USHA (42 U.S.C. 1437f) authorizes housing assistance to aid lower-income families in renting safe and decent housing. Housing assistance payments are limited by FMRs established by HUD for different geographic areas. In the Housing Choice Voucher (HCV) program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (see 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (non-luxury) nature with suitable amenities and is typically set at the 40th percentile of the distribution of gross rents. In addition, all rents subsidized under the HCV program must meet reasonable rent standards. HUD's regulations at 24 CFR 888.113 permit the Department to establish 50th percentile FMRs for certain areas.

In addition to the HCV program, FMRs are used to determine initial renewal rents for some expiring project-based Section 8 contracts, to determine initial rents for housing assistance payment contracts in the Moderate Rehabilitation Single Room Occupancy program, and to serve as rent ceilings for rental units in the HOME Investment Partnerships program. HUD also uses FMRs in the calculation of maximum award amounts for Continuum of Care grantees and in the calculation of flat rents in Public Housing units.

II. Procedures for the Development of FMRs

Section 8(c)(1) of the USHA, as amended by HOTMA requires the Secretary of HUD to publish FMRs not less than annually. Section 8(c)(1)(A) states, in part, that "[e]ach fair market rental in effect under this subsection shall be adjusted to be effective on October 1 of each year to reflect changes, based on the most recent available data trended so the rentals will be current for the year to which they apply, of rents for existing or newly constructed rental dwelling units, as the case may be, of various sizes and types in the market area suitable for occupancy by persons assisted under this section."

Section 8(c)(1)(B) also provides that FMRs for an area shall be published not less than annually on the Department's Web site on the World Wide Web. In addition, HUD is required to publish a notice in the **Federal Register** alerting the public that such FMRs are being published. Section 8(c)(1)(B) provides that such FMRs shall become effective no earlier than 30 days after the date of such publication. HUD is required, however, to establish a procedure for PHAs and other interested parties to comment on such FMRs and to request, within a time specified by HUD, reevaluation of the FMRs in a jurisdiction before such rentals become effective.

This notice serves as the statutory requirement to provide notice that FY 2017 FMRs are available at *https://www.huduser.gov/portal/datasets/fmr.html.* In addition, HUD's regulations at 24 CFR 888.113(c) set out procedures for HUD to assess whether areas are eligible for FMRs at the 50th percentile. Minimally qualified areas [1] are reviewed each year unless not qualified to be reviewed. Areas are not qualified to be reviewed if they have been made a 50th-percentile area within the last three years or have lost 50th-percentile status for failure to deconcentrate within the last three years.

In FY 2016 there were 14 areas using 50th-percentile FMRs. Of these 14 areas, no area completed three years of program participation and were evaluated. Therefore, all 14 areas will continue to operate using 50th percentile FMRs in FY 2017.

In addition, two areas that previously "graduated" from the 50th percentile FMR program, become 50th percentile FMR areas again because voucher tenant concentrations are now above this 25 percent minimum. Under the 50th percentile FMR program, areas that experience a reduction in the concentration of tenants below the 25 percent minimum required to reside in the 5 percent of the census tracts within the FMR area with the largest number of voucher program participants, are evaluated each year after they lose their 50th percentile FMRs. Two of these areas, Bergen-Passaic, NJ HUD Metro FMR Area, and San Diego-Carlsbad-San Marcos, CA MSA, become 50th percentile FMR areas again because voucher tenant concentrations are now above this 25 percent minimum. In addition, a new area, Spokane, WA HUD Metro FMR Area qualified for the first time by registering a significant increase in its concentration measure to get above 25 percent. Based on the current regulations, HUD is including these 3 areas along with the 14 areas from FY 2016 in the use of 50th percentile FMRs in FY 2017.

FY 2017 50TH-PERCENTILE FMR AREAS AND YEAR OF NEXT REEVALUATION

Albuquerque, NM MSA	2018	Baltimore-Columbia-Towson, MD MSA	2019
Bergen-Passaic, NJ HUD Metro FMR Area	2020	Chicago-Joliet-Naperville, IL HUD Metro FMR Area	2018
Denver-Aurora-Broomfield, CO MSA	2018	Hartford-West Hartford-East Hartford, CT HUD Metro FMR Area.	2018
Urban Honolulu, HI MSA	2018	Kansas City, MO–KS HUD Metro FMR Area	2018
Milwaukee-Waukesha-West Allis, WI MSA	2018	Philadelphia-Camden-Wilmington, PA–NJ–DE–MD	2019
Riverside-San Bernardino-Ontario, CA MSA	2018	San Diego-Carlsbad-San Marcos, CA MSA	2020
Spokane, WA HUD Metro FMR Area	2020	Tacoma, WA HUD Metro FMR Area	2018

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[1] As defined in 24 CFR 888.113(c), a minimally qualified area is an area with at least 100 census tracts where 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent and where 25 percent or more of voucher tenants reside in the 5 percent of the census tracts within the FMR area that have the largest number of voucher program participants. This continues to be evaluated with 2000 Decennial Census information. In light of HUD's June 6, 2015 Advanced Notice of Proposed Rulemaking, HUD has chosen not to update the area selection criteria with 2010 tract delineations in order to ease the anticipated future implementation of a Small Area FMR based deconcentration rule.

FY 2017 50TH-PERCENTILE FMR AREAS AND YEAR OF NEXT REEVALUATION—Continued

Virginia Beach-Norfolk-Newport News, VA–NC MSA	2018	Washington, DC–VA–MD HUD Metro FMR Area	2019
West Palm Beach-Boca Raton, FL HUD Metro FMR Area.	2019		

HUD published a proposed rule titled, "Establishing a More Effective Fair Market Rent System; Using Small Area Fair Market Rents in Housing Choice Voucher Program Instead of the Current 50th Percentile FMRs" on June 16, 2016 (81 FR 39218) that proposes to revise the 50th percentile FMR regulation and replace it with a Small Area FMR based regulation for certain areas.

Two of these proposed Small Area FMR areas will start the three year 50th percentile FMR period in FY 2017 (Bergen-Passaic, NJ and San Diego-Carlsbad-San Marcos, CA) while the third area to begin use of 50th percentile FMRs in FY 2017 (Spokane, WA) is not currently proposed to be a Small Area FMR Area. HUD is specifically seeking comment from these three new 50th percentile areas as to whether being elevated to a 50th percentile area in the FY 2017 FMRs would create operational challenges under HUD's proposed Small Area FMR rule. HUD also request comments on whether the PHAs within these 50th percentile areas would consider requesting a waiver for exemption from 50th percentile status in FY 2017 as a way to address these challenges.

III. FMR Methodology

This section provides a brief overview of how HUD computes the FY 2017 FMRs. For complete information on how HUD determines FMR areas, and on how HUD derives each area's FMRs, see the online documentation at *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html&data=fmr17.*

HUD bases the FY 2017 FMRs on the updated metropolitan area definitions published by OMB on February 28, 2013. HUD has not implemented any geography changes for FY 2017; however, several areas have been renamed to avoid confusion. For example, the Morristown, TN HUD Metro FMR Area (HMFA) has been renamed to the Grainger County, TN HMFA to avoid confusion with Morristown, TN MSA. Similarly, HUD has not included any method changes to the calculation of FY 2017 FMRs from what was used in the Final FY 2016 FMRs beyond updates to use the most current data available. For a complete description of the methods used to calculate FY 2016 FMRs, please see the Final FY 2016 FMR notice, published in the **Federal Register** on December 11, 2015 (80 FR 77124) and available at *https://www.huduser.gov/portal/datasets/fmr/fmr2016f/FY2016_Final_FMRs_preamble.pdf.*

A. Base Year Rents

The U.S. Census Bureau released standard tabulations of 5-year ACS data collected between 2010 through 2014 in December of 2015. For FY 2017 FMRs, HUD uses the 2010–2014 5-year ACS data to update the base rents. As in FY 2016, HUD used ACS estimates where the margin of error of the estimate is less than half the size of the estimate itself.

HUD has updated base rents each year based on new 5-year data since FY 2012 for which HUD used 2005–2009 ACS data. HUD is also updating base rents for Puerto Rico FMRs using the 2010–2014 Puerto Rico Community Survey (PRCS); HUD first updated the Puerto Rico base rents in FY 2014 based on 2007–2011 PRCS data collected through the ACS program.

HUD historically based FMRs on gross rents for recent movers (those who have moved into their current residence in the last 24 months) measured directly. However, due to the way Census constructs the 5-year ACS data, HUD developed a new method for calculating recent-mover FMRs in FY 2012. As in FY 2012, HUD assigns all areas a base rent, which is the two-bedroom standard quality 5-year gross rent estimate from the ACS. Because HUD's regulations mandate that FMRs must be published as recent mover gross rents, HUD continues to apply a recent mover factor to the standard quality base rents assigned from the 5-year ACS data. The calculation of the recent mover factor is described below.

B. Recent Mover Factor

Following the assignment of the standard quality two-bedroom rent described above, HUD applies a recent mover factor to these rents. The calculation of the recent mover factor for FY 2017 is updated to use 2014 ACS data but otherwise remains unchanged from the method used in FY 2016.

In general, HUD uses the 1-year ACS-based two-bedroom recent mover gross rent estimate from the smallest geographic area encompassing the FMR area for which the estimate is statistically reliable to calculate the recent mover factor.[2] HUD calculates some areas' recent mover factors using data collected just for the FMR area. As in FY 2016, HUD bases other areas' recent mover factors on larger geographic areas if this is necessary to obtain statistically reliable estimates. For metropolitan areas that are subareas of larger metropolitan areas, the order is FMR area, metropolitan area, aggregated metropolitan parts of the state, and state. Metropolitan areas that are not divided follow a similar path from FMR area, to aggregated metropolitan parts of the state, to state. In nonmetropolitan areas HUD bases the recent mover factor on the FMR area, the aggregated non-metropolitan parts of the state, or if that is not available, on the basis of the whole state. HUD calculates the recent mover factor as the percentage change between the 5-year 2010–2014 standard quality two-bedroom gross rent and the 1 year 2014 recent mover two-bedroom gross rent for the recent mover factor area. HUD does not allow recent mover factors to lower the standard quality base rent; therefore, if the 5-year standard quality rent is larger than the comparable 1-year recent mover rent, the recent mover factor is set to 1. The process for calculating each area's recent mover factor is detailed in the FY 2017 FMR documentation system available at: *http://www.huduser.gov/portal/datasets/fmr/fmrs/docsys.html&data=fmr17.* Applying the recent mover factor to the standard quality base rent produces an "as of" 2014 recent mover two-bedroom base gross rent for the FMR area.

C. Other Rent Survey Data

HUD calculated base rents for the insular areas using the 2010 decennial census of American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands beginning with the FY 2016 FMRs.[3] This 2010 base year data was updated to 2013 for the FY 2016 FMRs and is updated through 2014 for the FY 2017 FMRs using national ACS data.

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[2] For the purpose of the recent mover factor calculation, statistically reliable is where the recent mover gross rent has a margin of error that is less than half the estimate.

[3] The ACS is not conducted in the Pacific Islands (Guam, Northern Marianas and American Samoa) or the U.S. Virgin Islands. As part of the 2010 Decennial Census, the Census Bureau conducted "long-form" sample surveys for these areas. The results gathered by this long form survey have been incorporated into the FY 2017 FMRs.

HUD does not use the ACS as the base rent or recent mover factor for 12 areas where the FY 2017 FMR was adjusted based on survey data collected in 2012 for Hood River County, OR, Mountrail County, ND, Ward County, ND, and Williams County, ND,[4] survey data collected in 2014 for Bennington County, VT, Windham County, VT, Windsor County, VT, and Seattle, WA, survey data from 2015 for Portland, OR, Oakland, CA, and survey data from 2016 for Burlington, VT and San Francisco, CA.[5]

D. Updates From 2014 to 2015 and Forecast to April 2017

HUD updates the ACS-based "as of" 2014 rent through the end of 2015 using the annual change in CPI from 2014 to 2015. As in previous years, HUD uses local CPI data coupled with Consumer Expenditure Survey (CEX) data for FMR areas with at least 75 percent of their population within Class A metropolitan areas covered by local CPI data. HUD uses Census region CPI data for FMR areas in Class B and C size metropolitan areas and nonmetropolitan areas without local CPI update factors. Additionally, HUD is using CPI data collected locally in Puerto Rico as the basis for CPI adjustments from 2014 to 2015 for all Puerto Rico FMR areas. Following the application of the appropriate CPI update factor, HUD trends the estimate from 2015 to be as of FY 2017 using forecasts of expected growth in gross rents. In the Final FY 2016 FMRs, HUD used a national forecast of expected changes in gross rents between 2014 and FY 2016. For FY 2017 FMRs, HUD continues to use a national forecast of expected changes in gross rents from 2015 to FY 2017.

E. Bedroom Rent Adjustments

HUD calculates the primary FMR estimates for two-bedroom units. This is generally the most common sized rental unit and, therefore, the most reliable to survey and analyze. Formerly, after each Decennial Census, HUD calculated rent relationships between two-bedroom units and other unit bedroom counts and used them to set FMRs for other units. HUD did this because it is much easier to update two-bedroom estimates and to use pre-established cost relationships with other unit bedroom counts than it is to develop independent FMR estimates for each unit bedroom count. When calculating FY 2013 FMRs, HUD updated the bedroom ratio adjustment factors using 2006–2010 5-year ACS data. The bedroom ratio methodology used in this update was the same methodology that was used when calculating bedroom ratios using 2000 Census data. The bedroom ratios HUD used in the calculation of FY 2017 FMRs have been updated using average data from three five-year ACS data series (2008–2012, 2009–2013 and 2010–2014).

HUD establishes bedroom interval ranges based on an analysis of the range of such intervals for all areas with large enough samples to permit accurate bedroom ratio determinations. HUD sets these ranges as follows: Efficiency FMRs are constrained to fall between 0.63 and 0.83 of the two-bedroom FMR; one-bedroom FMRs must be between 0.75 and 0.87 of the two-bedroom FMR; three-bedroom FMRs must be between 1.15 and 1.34 of the two-bedroom FMR; and four-bedroom FMRs must be between 1.28 and 1.64 of the two-bedroom FMR. (HUD sets these upper limits for the three-bedroom and four-bedroom FMR ratios without regard to the adjustments discussed in the next paragraph.) HUD adjusts bedroom rents for a given FMR area if the differentials between bedroom-size FMRs were inconsistent with normally observed patterns (*i.e.*, efficiency rents are not allowed to be higher than one-bedroom rents and four-bedroom rents are not allowed to be lower than three-bedroom rents). The bedroom ratios for Puerto Rico follow these constraints.

HUD further adjusts the rents for three-bedroom and larger units to reflect HUD's policy to set higher rents for these units. This adjustment is intended to increase the likelihood that the largest families, who have the most difficulty in leasing units, will be successful in finding eligible program units. The adjustment adds 8.7 percent to the unadjusted three-bedroom FMR estimates and adds 7.7 percent to the unadjusted four-bedroom FMR estimates. HUD derives FMRs for unit bedroom counts larger than four by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room occupancy units are 0.75 times the zero-bedroom (efficiency) FMR.[6]

For low-population, nonmetropolitan counties with small or statistically insignificant data for any two of the three 5-year ACS standard quality rents series used in the average, HUD uses state non-metropolitan data to determine bedroom ratios for each unit bedroom count. HUD made this adjustment to protect against unrealistically high or low FMRs due to insufficient sample sizes.

IV. Manufactured Home Space Surveys

The FMR HUD uses to establish payment standard amounts for the rental of manufactured home spaces in the HCV program is 40 percent of the FMR for a two-bedroom unit.[7] HUD will consider modification of the manufactured home space FMRs where public comments present statistically valid survey data showing the 40th-percentile manufactured home space rent (including the cost of utilities) for the entire FMR area.

All approved exceptions to these rents that were in effect in FY 2016 were updated to FY 2017 using the same data used to estimate the HCV program FMRs. If the result of this computation was higher than 40 percent of the new two-bedroom rent, the exception remains and is listed in Schedule D online. The FMR area definitions HUD establishes for the rental of manufactured home spaces are the same as the area definitions established for the other FMRs.

V. Small Area Fair Market Rents

PHAs in the Dallas, TX HUD Metro FMR Area (HMFA), continue to use Small Area Fair Market Rents (SAFMRs) per the terms of court entered settlement. These FMRs are listed in the Schedule B addendum. PHAs who had been participating in HUD's SAFMR Demonstration may request a waiver of HUD's existing payment standard regulations to continue to use Small Area FMRs after the expiration of their demonstration agreements. HUD will work with these PHAs to effectuate the required waivers.

HUD calculates SAFMRs using a rent ratio determined by dividing the median gross rent across all bedrooms for the small area (a ZIP code) by the similar median gross rent for the metropolitan area of the ZIP code. In small areas where the median gross rent is not statistically reliable, HUD substitutes the median gross rent for the county containing the ZIP code in the numerator of the rent ratio calculation. HUD multiplies this rent ratio by the current two-bedroom rent for the entire metropolitan area containing the small area to generate the current year two-bedroom rent for the small area. As in FY 2016, HUD continues to use a rolling-average of ACS data in calculating the Small Area FMR rent ratios. The Department believes coupling the most current data with previous year's data minimizes excessive year-to-year variability in Small Area FMR rent ratios due to sampling variance. Therefore, for FY 2017 SAFMRs, HUD has updated the rent ratios to use an average of the rent ratios calculated from the 2008–2012, 2009–2013, and 2010–2014 5-year ACS estimates.

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[4] Surveys conducted in 2012 will be superseded for FMR base rent purposes with the FY 2018 FMRs.

[5] Similar to FY 2016, HUD has not allocated funds to conduct FMR area surveys in FY 2017. Therefore, areas wishing to conduct local surveys for the purposes of revising FMRs will have to fund those surveys locally as well.

[6] As established in the interim rules implementing the provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub. L. 105–276. In 24 CFR 982.604).

[7] In the HCV program, a family which owns a manufactured home may use their voucher to subsidize the rent of a plot of land within a manufactured home park designed for the accommodation of a single manufactured home.

VI. Request for Public Comments

HUD is seeking public comments on the methods it uses to calculate FY 2017 FMRs including Small Area FMRs, and FMR levels for specific areas. Due to its current funding levels, HUD no longer has sufficient resources to conduct local surveys of rents to address comments filed regarding the FMR levels for specific areas. HUD continually strives to calculate FMRs that meet the statutory requirement of using "the most recent available data" while also serving as an effective program parameter.

While HUD is making no changes in the methodology used to estimate the FY 2017 FMRs from the methods HUD used in calculating the FY 2016 FMRs, HUD is interested in making improvements in FMR estimation methods in the future. As noted earlier, the FMR procedures enacted in Section 8(c)(1)(B) of HOTMA require that HUD publish a notice in the **Federal Register** seeking comment on any proposed "material changes" in methodology. In this notice, HUD requests public comment on what should be considered "material changes" in FMR estimation methods for purposes of triggering public notice and comment under HOTMA. For example, on the assumption that any change in the FMR estimation method must necessarily change at least some FMR values from what they would otherwise be, and that such changes have the potential to change subsidy levels for voucher tenants to the extent they are fully accounted for in payment standard adjustments, what level of potential subsidy redistribution caused by a change in FMR estimation methods should HUD consider "material" prior to implementing such changes? What other effects of changes in FMR estimation methods should HUD consider in determining whether such changes are "material?" Examples might include the number of FMR areas affected by the proposed change, or the number of areas whose FMRs would change beyond a particular threshold such as 10 percent. Should HUD consider any and all changes made to the FMR estimation methods to rise to the level of a material change? If so, would this be consistent with the purpose of Section 8(c)(1)(B) of HOTMA?

HUD anticipates publishing a **Federal Register** notice with responses to comments on this notice including responses to what is considered "material changes" in methodology along with proposed material changes to be implemented for the FY 2018 FMRs following a review of the comments on this notice.

V. Requests for FMR Reevaluations

As amended by HOTMA, Section 8(c)(1)(B) states, in part that HUD "shall establish a procedure for PHAs and other interested parties to comment on such fair market rentals and to request, within a time specified by the Secretary, reevaluation of the fair market rentals in a jurisdiction before such rentals become effective." PHAs or other interested parties interested in requesting HUD reevaluation of its FY 2017 FMRs must follow the following procedures:

1. By the end of the comment period, such reevaluation requests must be submitted publicly through *www.regulations.gov* or directly to HUD as described above. PHAs representing at least half of the voucher tenants in multijurisdictional FMR areas must agree that the re-evaluation is necessary.

2. In order for a reevaluation to occur, the requestor(s) must supply HUD with data more recent than the 2014 American Community Survey data using the survey guidance available at *https://www.huduser.gov/portal/datasets/fmr/NoteRevisedAreaSurveyProcedures.pdf* and *https://www.huduser.gov/portal/datasets/fmr/PrinciplesforPHA-ConductedAreaRentSurveys.pdf.*

3. On or about October 3, HUD will post a list, at *https://www.huduser.gov/portal/datasets/fmr.html,* of the areas requesting reevaluations and where FY 2016 FMRs remain in effect.

4. Data for reevaluations must be supplied to the Department by Friday January 6, 2017. On Monday January 9, 2017, HUD will post at *https://www.huduser.gov/portal/datasets/fmr.html* a list of areas failing to deliver data and making the FY 2017 FMRs effective in these areas.

5. HUD will use the data delivered by January 6, 2017 to reevaluate the FMRs and following the reevaluation, will post revised FMRs with an accompanying **Federal Register** notice stating the revised FMRs are available and the effective date of the FMRs for these jurisdictions. Such notice will include HUD responses to comments filed during the comment period on FY2017 FMRs if no intervening "Notice of Proposed Material Change" has been published.

6. Any data supporting a change in FMRs supplied after January 6, 2017, or that was not submitted in connection with a request for reevaulation of the FY2017 FMRs for an area, will be incorporated into FY 2018 FMRs.

Questions on how to conduct FMR surveys may be addressed to the individuals listed in the **FOR FURTHER INFORMATION** section of this notice. Data submissions for FMR reevaluations must include a full description of the rental housing survey method used to ensure that the data comply with HUD's rental housing survey guidance.

For small metropolitan areas without one-year ACS data and nonmetropolitan counties, HUD has developed a method using mail surveys that is discussed on the FMR Web page: *https://www.huduser.gov/portal/datasets/fmr.html#fmrsurvey.* This method allows for the collection of as few as 100 one-bedroom, two-bedroom and three-bedroom recent mover (tenants that moved in last 24 months) units.

While HUD has not developed a specific method for mail surveys in areas with 1-year ACS data, HUD would apply the standard established for Random-Digit Dialing (RDD) telephone rent surveys. HUD will evaluate these survey results to determine whether they would establish a new FMR statistically different from the current FMR, which means that the survey confidence interval must not include the FMR. The survey should collect results based on 200 one-bedroom and two-bedroom eligible recent mover units to provide a small enough confidence interval for significant results in large market mail surveys. Areas with statistically reliable 1-year ACS data generally are not considered to be good candidates for local surveys due to the size and completeness of the ACS process.

Other survey methods are acceptable in providing data to support reevaluation requests if the survey method can provide statistically reliable, unbiased estimates of the gross rent of the entire FMR area. In general, recommendations for FMR changes and supporting data must reflect the rent levels that exist across all rental units within the entire FMR area and should be statistically reliable.

PHAs in nonmetropolitan areas may, in certain circumstances, conduct surveys of groups of counties. HUD must approve all county-grouped surveys in advance. PHAs are cautioned that the resulting FMRs may not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that in counties where FMRs are based on the combined rents in the cluster of FMR areas HUD will not revise their FMRs unless the grouped survey results show a revised FMR statistically different from the combined rent level.

Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn to be statistically representative of the entire rental housing stock of the FMR area. Surveys must include units at all rent levels and be representative by structure type (including single-family, duplex, and other small rental properties), age of housing unit, and geographic location. The current 5-year ACS data should be used as a means of verifying if a sample is representative of the FMR area's rental housing stock.

A PHA or contractor that cannot obtain the recommended number of sample responses after reasonable efforts should consult with HUD before abandoning its survey; in such situations, HUD may find it appropriate to relax normal sample size requirements.

The Department has developed guidance on how to provide data-supported comments on or requests for reevaluation of Small Area FMRs using HUD's special tabulations of the distribution of gross rents by bedroom unit size for ZIP Code Tabulation Areas. This guidance is available at *http://www.huduser.gov/portal/datasets/fmr.html* in the FY 2017 FMR section and should be used by interested parties in commenting on whether or not the level of Small Area FMRs are too high or too low (*i.e.* Small Area FMRs that are larger than the gross rent necessary to make 40 percent of the units accessible for an individual zip code or that are smaller than the gross rent necessary to make 40 percent of the units accessible for a given zip code). HUD will post revised Small Area FMRs after confirming commenters calculations.

HUD will consider increasing manufactured home space FMRs where public comment demonstrates that 40 percent of the two-bedroom FMR is not adequate. In order to be accepted as a basis for revising the manufactured home space FMRs, comments must include a pad rental survey of the mobile home parks in the area, identify the utilities included in each park's rental fee, and provide a copy of the applicable public housing authority's utility schedule.

As stated earlier in this notice, HUD is required to use the most recent data available when calculating FMRs. Therefore, in order to re-evaluate an area's FMR, HUD requires more current rental market data than the 2014 ACS. HUD encourages a PHA or other interested party that believes the FMR in their area is incorrect to file a comment even if they do not have the resources to provide market-wide rental data. In these instances, HUD will use the comments, should survey funding be restored, when determining the areas HUD will select for HUD-funded local area rent surveys.

VII. Environmental Impact

This Notice involves the establishment of fair market rent schedules, which do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this Notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR part 888, are available at *https://www.huduser.gov/portal/datasets/fmr.html:*

Dated: August 19, 2016.

Matthew E. Ammon,

Deputy Assistant Secretary for Policy Development and Research.

Fair Market Rents for the Housing Choice Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. Metropolitan Areas—Most FMRs are market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental-housing units are in direct competition. HUD is using the metropolitan Core-Based Statistical Areas (CBSAs), which are made up of one or more counties, as defined by the Office of Management and Budget (OMB), with some modifications. HUD is generally assigning separate FMRs to the component counties of CBSA Micropolitan Areas.

b. Modifications to OMB Definitions—Following OMB guidance, the estimation procedure for the FY 2017 FMRs incorporates the OMB definitions of metropolitan areas based on the CBSA standards as implemented with 2000 Census data and updated by the 2010 Census in February 28, 2013. The adjustments made to the 2000 definitions to separate subparts of these areas where FMRs or median incomes would otherwise change significantly are continued. To follow HUDs policy of providing FMRs at the smallest possible area of geography, no counties were added to existing metropolitan areas due to recent updates in metropolitan area definitions. All counties added to metropolitan areas will still be treated as separate counties. All metropolitan areas that have at least one subarea will also receive a subarea, that is the rents from a county that is a subarea will not be used for the remaining metropolitan subarea rent determination.

The specific counties and New England towns and cities within each state in MSAs and HMFAs were not changed by the February 28, 2013 OMB metropolitan area definitions. These areas are listed in Schedule B, available online at *https://www.huduser.gov/portal/datasets/fmr.html.*

2. Unit Bedroom Count Adjustments

Schedule B, available at *https://www.huduser.gov/portal/datasets/fmr.html* shows the FMRs for zero-bedroom through four-bedroom units. The Schedule B addendum shows Small Area FMRs for all PHAs operating using Small Area FMRs (please see section V of this notice for a list of participating PHAs). The FMRs for unit sizes larger than four bedrooms may be calculated by adding 15 percent to the four-bedroom FMR for each extra bedroom. For example, the FMR for a five-bedroom unit is 1.15 times the four-bedroom FMR, and the FMR for a six-bedroom unit is 1.30 times the four-bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the zero-bedroom FMR.

3. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in the online Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each state. The exception FMRs for manufactured home spaces in Schedule

D, available at *https://www.huduser.gov/portal/datasets/fmr.html,* are listed alphabetically by state.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one state can be identified by consulting the listings for each applicable state.

c. Two nonmetropolitan counties are listed alphabetically on each line of the non-metropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan county are listed immediately following the county name.

[FR Doc. 2016–20552 Filed 8–25–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2016–N028: FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Availability of Proposed Low-Effect Habitat Conservation Plan, Orange County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments/information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (Act). Orange County Utilities Department, is requesting a 5-year ITP. We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the plan qualifies as low effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by September 26, 2016.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: northflorida@fws.gov. Use "Attn: Permit number TE02053C–0" as your message subject line for Orange County Utilities Department.

Fax: Field Supervisor, (904) 731–3191, Attn: Permit number TE02053C–0.

U.S. mail: Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE02053C–0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Zakia Williams, telephone: (904) 731–3119; email: *zakia_williams@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the "take" of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant Proposal

Orange County Utilities Department

Orange County Utilities Department, is requesting take of approximately 5.0 acres of occupied sand skink foraging and sheltering habitat incidental to construction of a road extension, and they seek a 5-year permit. The 41.7-acre project is located on parcel number 09–23–27–0000–00–006 within Section 16 and 17, Township 23 South, and Range 27 East, Orange County, Florida. The project includes construction of a road extension and associated infrastructure. The applicant proposes to mitigate for the take of the sand skink by the purchase of 10.0 mitigation credits from the Scrub Conservation Bank.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in their HCP. Therefore, our proposed issuance of the requested ITP qualifies as a categorical exclusion under the National Environmental Policy Act, as provided by Department of the Interior implementing regulations in part 46 of title 43 of the Code of Federal Regulations (43 CFR 46.205, 46.210, and 46.215). A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue ITP number TE02053C–0. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES.**

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: August 10, 2016.

Jay B. Herrington,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2016–20484 Filed 8–25–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0108; FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax 703–358–2281.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, 703–358–2104 (telephone); 703–358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
		Endangered Species	
81689B	Leon Munyan	81 FR 5778; February 3, 2016	April 5, 2016.
82084B	Edwin Rymut	81 FR 8093; February 17, 2016	May 9, 2016.
84562B	University of California	81 FR 16197; March 25, 2016	August 22, 2016.
88754B	Arthur Webber	81 FR 16197; March 25, 2016	June 1, 2016.
88758B	Douglas Wyatt	81 FR 16197; March 25, 2016	June 1, 2016.
94211B	Terry Freeman	81 FR 33700; May 27, 2016	July 20, 2016.
93135B	Patrick Ballenger	81 FR 33700; May 27, 2016	July 25, 2016.
88951B	Terry Jones	81 FR 33700; May 27, 2016	July 25, 2016.
91101B	Greenville Zoo	81 FR 35792; June 3, 2016	July 26, 2016.
87845B	Xochitl De La Rosa Reyna	81 FR 40716; June 22, 2016	July 27, 2016.
98525B	Kevin Petersen	81 FR 40716; June 22, 2016	August 4, 2016.
		Marine Mammals	
90060B	Laura Graham	81 FR 43223; July 1, 2016	August 16, 2016.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–20554 Filed 8–25–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/ A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compact (Crow Creek Sioux Tribe and the State of South Dakota)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compact between the Crow Creek Sioux Tribe and the State of South Dakota.

DATES: Effective August 26, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing tribal-state Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. See to 25 CFR 293.5. The Crow Creek Sioux Tribe and the State of South Dakota have reached an agreement to extend the expiration of their existing Tribal-State Class III gaming compact until December 31, 2016. This publishes notice of the new expiration date of the compact.

Dated: August 19, 2016.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2016–20436 Filed 8–25–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK9100000.L141000000.XX0000]

Second Call for Nominations to the Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the request for public nominations for the Bureau of Land Management (BLM) Alaska Resource Advisory Council (RAC). The RAC provides advice and recommendations to the BLM regarding land management issues. BLM Alaska will accept public nominations for 45 days after the publication of this notice.

DATES: All nominations must be received no later than October 11, 2016.

ADDRESSES: June Lowery, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, AK 99513, (907) 271–3130.

FOR FURTHER INFORMATION CONTACT: June Lowery, BLM Alaska, 222 West 7th Avenue, # 13, Anchorage, AK 99513, (907) 271–3130.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits or leases; representatives of energy and mineral development; representatives of the commercial timber industry; representatives of interests associated with transportation or rights-of-way; or representatives of developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations; archaeological and historic organizations; dispersed recreation activities; or nationally or regionally recognized wild horse and burro organizations; and

Category Three—Persons who hold State, county, or local elected office; employees of a State agency responsible for management of natural resources, land or water; representatives of Indian tribes within or adjacent to the area for which the council is organized; persons who are employed as academicians in natural resource management or natural sciences; or representatives of the affected public-at-large.

Those who submitted a nomination in response to the first call for nominations, published in the **Federal Register** on March 18, 2016, do not need to resubmit. All nominations from the first and second calls will be considered together during the review process. Individuals may nominate themselves or others. Nominees must be residents of Alaska. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. Individuals who are Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed Resource Advisory Council application; and
—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, the BLM Alaska State Office will issue a press release providing additional information for submitting nominations, with specifics about the number and categories of member positions available for the RAC.

Nominations and completed applications for the RAC should be sent to the office listed under the above **ADDRESSES** section.

Authority: 43 CFR 1784.4–1

Bud C. Cribley,
State Director.

[FR Doc. 2016–20509 Filed 8–25–16; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16X L1109AF LLUT980300–L11100000.XZ0000–24–1A]

2016 Second Call for Nominations for Utah Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request a second call for nominations for five open positions on the Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) because we did not receive a sufficient number of applications from the first call for nominations. The RAC provides advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. The BLM will accept public nominations for 30 days after the publication of this notice.

DATES: All nominations must be received no later than September 26, 2016.

ADDRESSES: Lola Bird, Public Affairs Specialist, Bureau of Land Management, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

FOR FURTHER INFORMATION CONTACT: Lola Bird, Public Affairs Specialist, Bureau of Land Management Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; by telephone (801) 539–4033 or by email: *lbird@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies are provided during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA (43 U.S.C. 1739) directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Two positions in Category One—Public land ranchers and representatives of organizations associated with energy and mineral development, the timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation.

Two positions in Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historical organizations, dispersed recreation activities, and wild horse and burro organizations.

One position in Category Three—Representatives of state, county, or local elected office; representatives and employees of a state agency responsible for the management of natural resources; representatives of Indian Tribes within or adjacent to the area for which the RAC is organized; representatives and employees of academic institutions who are involved in natural sciences; and the public-at-large.

Individuals may nominate themselves or others to serve on an advisory council. Nominees, who must be residents of the state or states where the RAC has jurisdiction, will be judged on the basis of their training, education, and knowledge of the council's geographical area. Nominees should also demonstrate a commitment to consensus building and collaborative decision-making. Individuals who are Federally-registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term "individual capacity" refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest. All nominations must be accompanied by letters of reference from any represented interests or organizations, a completed RAC application, and any other information that speaks to the nominee's qualifications.

Those who have already submitted a nomination in response to the first call for nominations (published in the **Federal Register**, 81 FR 14879, March 18, 2016) do not need to resubmit. All nominations from the first and second calls will be considered together during the review process.

The BLM-Utah will consult with the Governor's office before forwarding its recommendations to the Secretary of the Interior for a final decision.

Simultaneous with this notice, BLM-Utah will issue a press release providing additional information for submitting nominations.

Authority: 43 CFR 1784.4–1.

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–20551 Filed 8–25–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYR05000.L51100000.GN0000. LVEMK11CW630–WYW–168184]

Notice of Availability of the Final Environmental Impact Statement for the Sheep Mountain Uranium Project, Fremont County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Sheep Mountain Uranium Project and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Sheep Mountain Uranium Project Final EIS are available for public inspection in the BLM Lander Field Office, 1335 Main Street, Lander, Wyoming; and in the BLM Wyoming State Office, 5353 Yellowstone, Cheyenne, Wyoming. Interested persons may also review the Final EIS on the Internet at the project Web site at *http://www.blm.gov/wy/st/en/info/NEPA/documents/lfo/sheepmtn.html.*

FOR FURTHER INFORMATION CONTACT: Chris Krassin, Project Manager, telephone 307–332–8400; address Lander Field Office, 1335 Main Street, Lander, Wyoming 82520; email *blm_wy_sheep_mountain_eis@blm.gov.* Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Titan Uranium USA Inc., a wholly owned subsidiary of Titan Uranium Inc., submitted a 43 CFR 3809 plan of operations to the BLM Lander Field Office (LFO) for the Sheep Mountain Uranium Project (Project) in Fremont County, Wyoming on June 16, 2011. On February 29, 2012, Energy Fuels Inc. acquired Titan Uranium Inc. and all of its subsidiaries are now wholly-owned subsidiaries of Energy Fuels Resources (USA) Inc. (Energy Fuels). Energy Fuels will continue as the owner and operator of the Project. Energy Fuels submitted a revised Plan of Operations to the BLM on July 9, 2012 and August 27, 2013.

The Project is located 8 miles south of Jeffrey City, Wyoming, in south-central Fremont County, in the Crooks Gap-Green Mountain Mining District, which was extensively mined starting in the 1950s. This area lies 62 miles southeast of Riverton, 67 miles north of Rawlins, and 105 miles southwest of Casper. The Project is within the active State of Wyoming Permit to Mine 381C administered by the Wyoming Department of Environmental Quality-Land Quality Division (WDEQ–LQD). Energy Fuels' revised application to Permit to Mine 381C was approved in July 2015. Energy Fuels is currently considering applying for a U.S. Nuclear Regulatory Commission (NRC) Source Materials License.

Energy Fuels proposes to explore for and develop uranium reserves to produce approximately 1.0 million to 2.0 million pounds of U_3O_8, or yellowcake, from the uranium ore per year over an anticipated project life of 20 years. Mining would be completed using conventional methods including open pit and underground methods. Ore processing into yellowcake would occur either on site using a heap leach and solvent extraction/ion exchange or off site using the existing conventional Sweetwater Uranium Mill approximately 30 miles to the south. The boundary of the Sheep Mountain Project Area is within the active WDEQ–LQD Permit to Mine 381C Permit Area, encompassing approximately 3,611 acres (approximately 5.6 square miles), of which approximately 929 acres would be disturbed under the Proposed Action Alternative. Approximately 62 percent (572.5 acres) of the surface within the proposed action disturbance area historically was disturbed by previous mining and exploration activities.

The Final EIS addresses the direct, indirect and cumulative impacts of the proposed action, the No Action Alternative and the BLM Mitigation Alternative.

The No Action Alternative, as required by NEPA, describes conditions that would occur if the proposed Project were denied. The No Action Alternative includes reclamation by Energy Fuels of approximately 144 acres as required by the WDEQ–LQD Permit to Mine 381C, and the reclamation of the existing McIntosh Pit by the WDEQ-Abandoned

Mine Lands Program which began in 2014 and is scheduled to conclude in 2020. The Proposed Action Alternative is the Project as proposed by Energy Fuels in its plan of operations and the WDEQ–LQD Permit to Mine 381C as approved in July 2015.

The BLM Mitigation Alternative would utilize the same conventional mining techniques over the same period as under the Proposed Action Alternative, but modifications to the proposed reclamation plan would be required. In addition, the BLM Mitigation Alternative would identify opportunities to apply hierarchical mitigation strategies for on-site and regional mitigation strategies and identify areas appropriate to apply landscape-level conservation and management actions to achieve resource objectives.

The Notice of Intent to prepare an EIS was published in the **Federal Register** on August 23, 2011 (76 FR 52688). The scoping comments received in response to this notice were used while preparing the Draft EIS to inform during alternative development and to identify issues to be analyzed in the impact analysis. A 45-day public comment period for the Draft EIS was held from January 16–March 2, 2015. The BLM hosted a public meeting in Lander at the Fremont County Library on January 28, 2015.

Notable changes to the Draft EIS based on comments received include the following:

- Clarified the description of specific aspects of the Proposed Action, including revisions to the WDEQ–LQD Mine Permit 381C, storm-water management, disposal of dewatered waste water under the Wyoming Pollutant Discharge Elimination System (WYPDES), and roles and responsibilities of permitting agencies in allowing off-site versus on-site processing.
- Reviewed and revised the analysis of impacts to water resources as a result of the WYPDES permit and storm-water management plans under the Proposed Action Alternative for consistency with Mine Permit 381C.
- Added details to the analysis of impacts to Greater Sage-Grouse, particularly in regards to hauling material off site which included analyzing alternative haul routes to the potential off-site processing facility.
- Added details to the analysis of other resources such as public health and safety, wetlands, vegetation, soils, water, climate and air quality.

Following a 30-day Final EIS availability and review period, a Record of Decision (ROD) will be issued. The decision reached in the ROD is subject to appeal to the Interior Board of Land Appeals. The 30-day appeal period begins with the issuance of the ROD.

Authority: 40 CFR 1506.6, 40 CFR 1506.10

Mary Jo Rugwell,

BLM Wyoming State Director.

[FR Doc. 2016–20449 Filed 8–25–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS06000–L12320000–DA0000–14X–LVRDCO050000]

Notice of Intent To Establish a Campground Fee on Public Land in Gunnison County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Bureau of Land Management (BLM), Gunnison Field Office, Gunnison, Colorado, intends to establish an overnight camping fee at the Oh Be Joyful Campground.

DATES: Comments on the proposed fee changes must be received or postmarked by November 25, 2016 and include a legible full name and address. Effective February 26, 2017, the BLM will initiate fee collection at the Oh Be Joyful Campground, unless the BLM publishes a **Federal Register** notice to the contrary. Comments received after the close of the comment period or delivered to an address other than the one listed in this notice may not be considered or included in the administrative record for the proposed fee.

ADDRESSES: Documents concerning this fee change may be reviewed at the Gunnison Field Office, 210 W. Spencer Avenue, Suite A, Gunnison, CO 81230. Written comments may be mailed or delivered to the same address; faxed to 970–642–4990; or emailed to *blm_co_gfo_nepa_comments@blm.gov* with "Oh Be Joyful Fee Proposal" referenced in the subject line.

FOR FURTHER INFORMATION CONTACT: Stuart Schneider, Project Manager, at the address above, or phone (970) 642–4964. The Business Plan and information concerning the proposed fee schedule are available at *http://www.blm.gov/co/st/en/fo/gfo.html.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact Stuart Schneider during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Oh Be Joyful Campground is a destination campground for people visiting in the Gunnison Basin near Crested Butte, Colorado. The BLM's overall goal is to maintain the area's recreational experiences, quality social setting and overnight camping that require substantial Federal investment, while protecting natural resources. The BLM is committed to finding the proper balance between public use and the protection of public lands and resources. The campground qualifies as a site wherein visitors can be charged an expanded amenity fee for overnight use, authorized under Section 803(g)(2)(h) of the Recreation Enhancement Act (REA), 16 U.S.C. 6801 *et seq.* In accordance with the REA and implementing regulations at 43 CFR 2930, visitors would obtain an individual Recreation Use Permit to camp within the Oh Be Joyful Campground. Campers would be required to display a permit stub at each campsite. Permits would expire at the beginning of the subsequent calendar day. The suggested fees for campsites are $10 per night for sites with picnic tables and campfire containment devices (a limit of eight people and up to two tents); $5 per night for overflow sites with campfire containment devices (a limit of eight people and up to two tents); and $30 per night for proposed group campsites (site designed for 9–25 people). A vault toilet is available for all designated campsites and portable toilets are set up for use by the overflow camping areas during the high-use summer months. If potable drinking water is provided, all site fees would increase by $5 per night. As infrastructure improvements are made at the Oh Be Joyful Campground, overnight fees will be charged accordingly for campsites. Free dispersed camping would no longer be available at the Oh Be Joyful Campground and the surrounding area (approximately 100 acres). The BLM's goals for the Oh Be Joyful Campground fee program are to provide additional facilities through capital improvements; ensure that funding is available to maintain the campground; manage visitor use and provide a quality recreation experience under existing rules and regulations; provide for law enforcement presence; develop additional services (such as expanding interpretive and educational information); and protect resources. The

BLM will use fees collected to make infrastructure improvements and for expenses directly associated with managing the campground. Fees will be charged accordingly for any new campsites added to the Oh Be Joyful Campground and site amenities added to existing campsites. The BLM posted the Oh Be Joyful Campground Business Plan in October 2015, which outlines operational goals of the area and the purpose of the fee program. The Oh Be Joyful Campground Business Plan describes recreation opportunities and fees for camping. Prepared pursuant to the REA and the BLM recreation fee program policy, the Business Plan establishes the rationale for charging recreation fees, establishes a permit process, and establishes the collection of user fees. In accordance with the BLM recreation fee program policy, the Business Plan also outlines how the fees would be used at the campground area. The Business Plan also provides a market analysis of local recreation sites and sets the basis for the fee proposal. Through onsite notifications and local press releases, the BLM notified and involved the public at each stage of the planning process, including the proposal to collect fees. During a field office briefing in spring 2015, the Southwest Colorado Resource Advisory Council informally discussed and verbally expressed their support of charging a fee at the campground.

The BLM welcomes public comments on this proposal. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 6803 and 43 CFR part 2932.

Ruth Welch,

BLM Colorado State Director.

[FR Doc. 2016–20450 Filed 8–25–16; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–RTCA–21762; PPMPSPD1T.Y00000; PPSESERO10]

Cancellation of September 7, 2016, Meeting of the Wekiva River System Advisory Management Committee

AGENCY: National Park Service, Interior.

ACTION: Cancellation of meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, (5 U.S.C. Appendix 1–16), that the September 7, 2016, meeting of the Wekiva River System Advisory Management Committee previously announced in the **Federal Register**, Vol. 81, February 2, 2016, pp. 5481, is cancelled.

FOR FURTHER INFORMATION CONTACT: Jaime Doubek-Racine, Community Planner and Designated Federal Official, Rivers, Trails, and Conservation Assistance Program, Florida Field Office, Southeast Region, 5342 Clark Road, PMB #123, Sarasota, Florida 34233, or via telephone (941) 685–5912.

SUPPLEMENTARY INFORMATION: The Wekiva River System Advisory Management Committee was established by Public Law 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary of the Interior in carrying out management responsibilities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1274).

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2016–20448 Filed 8–25–16; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Office of Federal Contract Compliance Programs is soliciting comments concerning its proposal to renew the Office of Management and Budget (OMB) approval of the following information collections: "38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act, as Amended" (OMB Control No. 1250–0004) and "29 U.S.C. 793, Section 503 of the Rehabilitation Act of 1973, as Amended" (OMB Control No. 1250–0005). The current OMB approval for these information collections expires on January 31, 2017. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted to the office listed in the addresses section below on or before October 25, 2016.

ADDRESSES: You may submit comments, identified by Control Number 1250–0004 and/or 1250–0005, by one of the following methods:

Electronic comments: Through the federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Address comments to Debra Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Commenters are strongly encouraged to submit their comments electronically via the *www.regulations.gov* Web site or to mail their comments early to ensure that they are timely received. Comments, including any personal information provided, become a matter of public record and will be posted to the *www.regulations.gov* Web site. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra Carr, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW., Room C3325, Washington, DC 20210. Telephone: (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (*e.g.*, large print, braille, audio recording), upon request, by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* The Office of Federal Contractor Compliance Programs (OFCCP) administers and enforces the three nondiscrimination and equal employment opportunity laws listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA)

These authorities prohibit employment discrimination by Federal contractors and subcontractors and require them to take affirmative action to ensure that equal employment opportunities are available regardless of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, federal contractors and subcontractors are prohibited from discriminating against applicants and employees for asking about, discussing, or sharing information about their pay or, in certain circumstances, the pay of their co-workers. This information collection request covers the recordkeeping and third party disclosure requirements for Section 503 and VEVRAA. OFCCP is not proposing to collect new information with this renewal.

Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to disability. Section 503 applies to Federal contractors and subcontractors with contracts in excess of $15,000.[1]

VEVRAA prohibits employment discrimination against protected veterans and requires affirmative action to ensure that persons are treated without regard to their status as a protected veteran. VEVRAA applies to Federal contractors and subcontractors with contracts of $150,000 or more.[2]

II. *Review Focus:* DOL is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. *Current Actions:* DOL seeks the approval of the extension of this information in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of Section 503 and VEVRAA, which it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act, as Amended.

OMB Number: 1250–0004.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 41,814,991.

Total Annual Responses: 41,814,991.

Average Time per Response: 7.75 minutes (0.13 hour).

Estimated Total Burden Hours: 5,427,933.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $667,186.56.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 29 U.S.C. 793, Section 503 of the Rehabilitation Act of 1973, as Amended.

OMB Number: 1250–0005.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 41,814,991.

Total Annual Responses: 41,814,991.

Average Time per Response: 6.3 minutes (0.11 hour).

Estimated Total Burden Hours: 4,392,369.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $667,186.56.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 22, 2016.

Debra A. Carr,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

Note to Reviewer

The Office of Federal Contract Compliance Programs (OFCCP) requests Office of Management and Budget (OMB) approval for 5,427,933 hours in combined recordkeeping and third party disclosure burden hours for compliance by federal contractors and subcontractors with the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) (VEVRAA). This compares with 10,546,660 hours in the most recently approved clearance request in 2014, a decrease of 5,118,727 (5,427,933 − 10,546,660 = − 5,118,727) hours. This decrease reflects an adjustment in the number of affected federal contractors, which was overestimated in the previous information collection.

OFCCP will not be collecting any new or different information. The burden hours primarily represent those federal contractors and subcontractors that are required under VEVRAA to list their job openings with the appropriate employment service delivery system and to develop, update, and maintain an affirmative action program. Reporting requirements under VEVRAA are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing information collection request for nonconstruction supply and service Federal contractors, separately approved under OMB Control Number 1250–0003.

As explained in Section 15 of this supporting statement, the decrease in burden hours for this information collection is primarily a result of OFCCP's proposal to use data from

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[1] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

[2] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908.

Employer Information Report EEO–1 (EEO–1 Report) to determine the number of covered federal contractors and contractor establishments instead of the methodology used in the previous information collection, which averaged data from multiple sources. That methodology resulted in an overestimation of the number of affected contractors. The EEO–1 Report provides a more accurate estimate of contractors and establishments covered by VEVRAA. EEO–1 Reports data from fiscal year 2014 shows 23,960 federal contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments). In addition, the decrease in burden hours is a result of certain requirements in the VEVRAA regulations that are only applicable to new contractors.

Supporting Statement

Department of Labor, OFCCP

OFCCP Recordkeeping and Reporting Requirements—38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended

Control Number: 1250–0004

A. Justification

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity laws that prohibit discrimination based on particular protected categories and require affirmative action to provide equal employment opportunities:

- Executive Order 11246, as amended (E.O. 11246),[1]
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503),[2] and
- Vietnam Era Veterans' Readjustment Assistance Act of 1974,[3] as amended, 38 U.S.C. 4212 (VEVRAA).

E.O. 11246 prohibits covered federal contractors[4] from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin. E.O. 11246 also prohibits contractors from taking discriminatory actions, including firing, against applicants and employees for asking about or sharing their own compensation information and, in certain instances, the compensation information of their co-workers.[5] E.O. 11246 applies contractors holding a Government contract in excess of $10,000, or Government contracts that have, or can reasonably expect to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against applicants and employees based on disability and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on physical or mental disabilities. Its requirements apply to contractors with a Government contract in excess of $15,000.[6]

VEVRAA prohibits employment discrimination against protected veterans, namely disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans, and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected veteran. Its requirements apply to contractors with a Government contract of $150,000 or more.[7]

OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60 and are accessible on the Web at *http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm.*

For purposes of OFCCP's recordkeeping and reporting requirements, the agency divides the obligations under these authorities into multiple information collection requests (ICRs).[8] These divisions are based on OFCCP's distinct enforcement authorities (*e.g.,* E.O. 11246 and Section 503 each has its own recordkeeping ICR), programs, and related regulatory requirements.

The reporting requirements under VEVRAA are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing ICR for nonconstruction supply and service contractors, separately approved under OMB Control Number 1250–0003.

Due to the pending expiration of OMB No. 1250–0004, OFCCP is seeking approval of the agency's VEVRAA recordkeeping and third party disclosure requirements.

1. Legal And Administrative Requirements

VEVRAA

41 CFR Part 60–300—Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, and Armed Forces Service Medal Veterans

These regulations establish the basic nondiscrimination and affirmative action requirements under the VEVRAA program. They define coverage, specify clauses to be included in contracts, provide procedures to ensure compliance by covered contractors, specify reporting and recordkeeping requirements, establish a benchmark for veteran representation in the workforce, and outline the basic requirements for AAPs under VEVRAA.

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[1] The regulations implementing Executive Order 11246 applicable to supply and service contractors are found at 41 CFR parts 60–1, 60–2, 60–3, 60–20, and 60–50.

[2] The regulations implementing Section 503 applicable to supply and service contractors are found at 41 CFR part 741.

[3] The regulations implementing VEVRAA applicable to supply and service contractors are found at 41 CFR part 60–300.

[4] As used herein and unless otherwise specified, the term "contractors" refers to federal contractors and subcontractors subject to the laws enforced by OFCCP. For E.O. 11246, the term also included federally assisted construction contractors and subcontractors.

[5] E.O. 13665 amended E.O. 11246 to include a prohibition on discrimination against any employee or applicant for inquiring about, discussing, or disclosing compensation or the compensation of another employee or applicant. Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014). The final rule published on September 11, 2015 and became effective on January 11, 2016. 80 FR 54934 (Sept. 11, 2015).

[6] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

[7] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

[8] OFCCP's other current ICRs include: Construction Recordkeeping Requirements (OMB No. 1250–0001), Complaint Procedures (OMB No. 1250–0002), Supply and Service Program (Scheduling Letter and Itemized Listing) (OMB No. 1250–0003), Section 503 Recordkeeping Requirements (OMB No. 1250–0005), Functional Affirmative Action Program Agreement Procedures (OMB No. 1250–0006), Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions (OMB No. 1250–0008), and Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors (OMB No. 1250–0009). In the future, and as appropriate, OFCCP proposes to consolidate several of these ICRs.

Section 60–300.5 describes the equal opportunity clause in Federal contracts. Paragraphs 2 through 6 of the clause pertain to the mandatory job listing requirements. Each covered contractor must list job openings with the appropriate state or local employment service delivery system (ESDS) in a format permitted by the ESDS. Each covered contractor must also provide and update as necessary information to the appropriate ESDS, including: Its status as a Federal contractor; that it desires priority referrals of protected veterans from the ESDS; the name and location of each hiring location within the state; and the contact information for the contractor official responsible for hiring at each location as well as any external job search organizations the contractor uses to assist in its hiring. Each contractor is required to include the EO clause in each of its subcontracts of $150,000 or more, although the clause may be incorporated by reference or operation.

Section 60–300.40 requires contractors with 50 or more employees and a contract of $150,000 or more to develop a VEVRAA AAP.

Section 60–300.42 requires contractors to invite job applicants at the pre-offer and post-offer stages to self-identify as protected veterans. The invitations to self-identify must state that the contractor is required to take affirmative action to employ and advance in employment protected veterans, and that the information sought is being requested on a voluntary basis.

Section 60–300.44 identifies the required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified protected veterans are provided equal opportunity
- Review all physical and mental job qualification standards to ensure that, to the extent any tend to screen out qualified disabled veterans, that the standards are job-related and consistent with business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop and implement procedures to ensure that employees are not harassed because of their veteran status.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally, and undertake appropriate outreach and positive recruitment activities designed to effectively recruit protected veterans.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's affirmative action program are implemented.
- Conduct data collection analysis pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years, including: The total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of protected veteran applicants hired; the total number of applicants hired; and the number of applicants who self-identified as protected veterans or who are otherwise known as protected veterans.

Section 60–300.45 requires contractors to either adopt the a hiring benchmark equal to the national percentage of veterans in the civilian labor force, or establish a hiring benchmark for protected veterans taking into account five factors specified in the regulation.

Section 60–300.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (*i.e.,* compliance review) to a narrowly focused analysis of a selected employment practice or policy (*i.e.,* compliance check), among others. Evaluation of compliance with VEVRAA is concurrent with evaluation of the contractor's compliance with E.O. 11246 and Section 503.

2. Use of Materials

The EO Clause, located at section 60–300.5, requires contractors to list job openings with the appropriate state or local ESDS in a format permitted by the ESDS. Each covered contractor must also provide and update as necessary information to the appropriate ESDS, including: Its status as a Federal contractor; that it desires priority referrals of protected veterans from the ESDS; the name and location of each hiring location within the state; and the contact information for the contractor official responsible for hiring at each location as well as any external job search organizations the contractor uses to assist in its hiring. The mandatory job listing requirement is a critical component to helping veterans find work with federal contractors. Providing the ESDS with the name and location of the contractor's hiring locations and contact information enables the ESDS to develop a centralized list of federal contractors and ensures that they have appropriate contact information if there are any questions that need to be resolved in the job listing or priority referral process.

Section 60–300.42 outlines the requirements for contractors' obligations to invite individuals to self-identify as a protected veteran. This process enables the contractor and OFCCP to collect valuable data on the number of protected veterans who apply for or are hired into federal contractor positions. This allows for assessment of the effectiveness of the contractor's recruitment and affirmative action efforts over time, and promotes successful recruitment and affirmative action.

Section 60–300.44 describes the required contents of a contractor's written affirmative action program. During a compliance evaluation, OFCCP reviews the contractor's affirmative action program to determine whether the contractor is complying with its obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

Section 60–300.45 requires contractors to set a benchmark for hiring protected veterans by using the national average for the number of veterans in the civilian labor force which OFCCP will provide (and periodically update) on its public Web site, or by setting a benchmark that fits the company's specific needs. This requirement provides contractors with a yardstick by which they can objectively measure the effectiveness of their efforts.

3. Improved Information Technology

In general, under OFCCP regulations each contractor develops its own methods for collecting and maintaining information. Contractors have the option to use methods that best suit their needs as long as they can retrieve and provide OFCCP with data upon request during a compliance evaluation.

The majority of contractors are repeat contractors. Since they are subject to OFCCP's regulatory requirements year after year, most have developed their information technology systems to generate the data required by OFCCP regulations.

Information technology systems used to comply with data requirements under OFCCP's VEVRAA regulations should be capable of performing the below functions.

- Collecting and analyzing employment activity data related to VEVRAA
- Analyzing outreach and recruitment
- Tracking self-identification
- Disseminating internal and external EO policies
- Providing notice to subcontractors and vendors
- Facilitating calculation of VEVRAA benchmarks
- Auditing and reporting of AAP program elements

In addition, OFCCP provides compliance assistance to all contractors, including smaller contractors by leveraging information technology. For example, OFCCP's Web site provides access to compliance resources and information, including the following.

- VEVRAA Contractor Resources *http://www.dol.gov/ofccp/regs/compliance/Resources.htm*
- Fact Sheets, Frequently Asked Questions and Webinar training *http://www.dol.gov/ofccp/regs/compliance/vevraa.htm*
- Sample AAPs *http://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm*
- Contractors' VEVRAA Hiring Benchmark Database *https://ofccp.dol-esa.gov/errd/VEVRAA.jsp*
- Disability and Veterans Community Resources Directory *https://ofccp.dol-esa.gov/errd/Resources.503VEVRAA.html*
- Employment Resource Referral Directory *https://ofccp.dol-esa.gov/errd/index.html*

OFCCP believes that advances in technology make contractor compliance with the recordkeeping and reporting requirements easier and less burdensome. However, in the absence of empirical data, OFCCP is unable to quantify the impact of improved information technology and thus, OFCCP does not include it in the calculation of burden hours.

According to the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277, 1998), by October 2003, Government agencies must generally provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable. OFCCP fulfills its GPEA requirements by permitting contractors to submit AAPs and supporting documentation via email or other electronic format.

4. Description of Efforts To Identify Duplication

The recordkeeping requirements contained in this request result exclusively from the implementation of VEVRAA. This authority uniquely empowers the Secretary of Labor, and by a Secretary's Order, the OFCCP, to require the collection, analysis, and reporting of data and other information in connection with the enforcement of the law and regulations requiring contractors to take affirmative action to ensure equal employment opportunity. No duplication of effort exists because no other Government agency has these specific data collection requirements.

While contractors maintain other employment data in the normal course of business, affirmative action programs under VEVRAA are unique in that contractors create them specifically to meet the requirements of OFCCP regulations. This comprehensive document is not available from any other source. Therefore, no duplication of effort exists.

5. Collection From Small Organizations

OFCCP's information collection does not have a significant economic impact on a substantial number of small entities. OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses by exempting contractor establishments with fewer than 50 employees from the AAP requirement. However, once OFCCP's authority covers one contractor's establishment, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employees threshold.[9]

6. Consequences for Federal Programs if This Information Is Collected Less Frequently

The requirements outlined in this ICR ensure that covered contractors meet their equal opportunity obligations to protected veterans. The nondiscrimination requirements of VEVRAA apply to all covered contractors. *See* 41 CFR 60–300.4. The requirement to prepare and maintain an affirmative action program, the specific obligations of which are detailed at 41 CFR 60–300.44, apply to those contractors with a Government contract of $150,000 or more and 50 or more employees.

If this information is collected less frequently than required, it could compromise OFCCP's enforcement of VEVRAA and its implementing regulations. OFCCP reviews contractor compliance through its compliance evaluation process. *See* 41 CFR 60–300.60. In order to accurately determine compliance, both OFCCP and the contractor must be able to analyze contractor actions taken and results obtained. Additionally, the data collection frequency for this ICR mirrors that of OFCCP's other programs, particularly the E.O. 11246 and Section 503 supply and service program, as VEVRAA compliance evaluations are conducted concurrently with that program.

As noted under Control Number 1250–0003, the older the data, the greater the chances that more qualified workers are the victims of any discrimination that has occurred and that the discrimination continues for a longer period. A consequence of such older data may be that the scope of the violation, resulting harm and the overall burden of contractor compliance are greater.

7. Special Circumstances for the Collection of Information

There are no special circumstances for the collection of this information.

8. Consultation Outside the Agency

OFCCP publishes all regulations containing recordkeeping or reporting requirements in the **Federal Register** for public comment before agency adoption. In addition, OFCCP maintains an ongoing dialogue, through compliance assistance, with contractor groups on a number of compliance issues, among them reporting and recordkeeping.

OFCCP will address comments received from the public under this paragraph at the end of the 60-day **Federal Register** comment period.

9. Gift Giving

OFCCP provides neither payments nor gifts to respondents.

10. Assurance of Confidentiality

Contractors who submit the required information may view it as sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR part 70. OFCCP requires that a contractor affected by a FOIA disclosure request be notified in writing and no decision to disclose information is made until the contractor has an opportunity to submit objections to the release of the information. Furthermore, it is OFCCP's position that it does not release any data obtained during the course of a compliance evaluation until the matter is completed.

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[9] 41 CFR 60–300.40—Applicability of the affirmative action program requirement.

11. Sensitive Questions

VEVRAA requires contractors to invite applicants to self-identify as a protected veteran and indicate whether a reasonable accommodation is required. The protected veteran category includes disabled veterans. Generally, a contractor informs its protected veteran employees that it collects and maintains their data strictly for affirmative action purposes. Race and sex data is not required under VEVRAA.

12. Estimate of Annual Information Collection Burden

The following is a summary of the methodology for the calculation of the recordkeeping and third party disclosure requirements for OFCCP's VEVRAA ICR.

As noted at the beginning of this supporting statement, the total in combined recordkeeping and third party disclosure burden hours for this ICR (5,398,974) is less than total number of hours approved in 2014 (10,546,660), as detailed in Sec. 15 below.

A. Information Collections

Section 60–300.5 Equal Opportunity Clause

Paragraph 2 of the Equal Opportunity Clause (EO Clause) requires contractors to list their job openings with the state or local employment service delivery system (employment service). OFCCP estimates that gathering records and providing the job listing to the employment service will take 25 minutes for approximately 15 listings per year. The burden for this third-party disclosure is 723,944 hours (115,831 contractor establishments × 25 minutes × 15 listings/60 = 723,944 hours).

Paragraph 4 of the EO Clause requires contractors to provide the appropriate employment service with the name and location of each of the contractor's hiring locations, a statement of its status as a federal contractor, the contact information for the hiring official at each location in the state, and a request for priority referrals of protected veterans. Paragraph 4 also requires contractors that use job search organizations to provide the employment service with the contact information for each job search organization. These requirements apply to new contractors, which OFCCP estimates to be 1 percent of all covered contractors. Existing contractors (or 99 percent of contractors) would have already provided the required information to the appropriate employment service or job search organization, as accounted for in the previous information collection. OFCCP estimates a total of 15 minutes for a new contractor to ensure that its information is provided to the employment service. The annual burden for this provision is 290 hours (1,158 new contractor establishments × 15 minutes/60 = 290 hours). OFCCP further estimates that 25 percent of new contractors, or 290, will use outside job search organizations and incur an additional 5-minute burden to notify the employment service of the contact information for its outside job search organizations. The annual burden for this provision is 24 hours (290 contractor establishments × 5 minutes/60 = 24 hours). This is a third-party disclosure.

Section 60–300.42 Invitation to Self-Identify

Section 60–300.42(a) requires contractors to extend a pre-offer invitation to self-identify as a "protected veteran." In the previous information collection, OFCCP estimated that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample "as is" or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. Existing contractors will no longer need to take these steps to comply with the pre-offer invitation requirement, so the estimated burden in this information collection applies to only new contractor parent companies, or 1 percent of the 23,960 contractor companies. The burden for this provision is 360 hours (240 new contractor companies × 1.5 hours = 360 hours).

Applicants for available positions with covered contractors will have a minimal burden complying with § 60–300.42(a) in the course of completing their application for employment with the contractor. Section 60–300.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are a protected veteran. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision, assuming that all applicants complete the form, is 3,474,930 hours (115,831 contractor establishments × 15 listings × 24 applicants × 5 minutes/60 = 3,474,930 hours). This is a third-party disclosure.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 28,958 hours (115,831 contractor establishments × 15 minutes/60 = 28,958 hours).

Section 60–300.44 Required Contents of the Affirmative Action Program

OFCCP estimates that it takes existing contractors (99 percent of all contractor establishments), or 114,673, approximately 7.5 hours to document and maintain material evidence of annually updating a joint section 503 and VEVRAA affirmative action program. The burden for this requirement is 860,048 hours (114,673 contractor establishments × 7.5 hours = 860,048 hours).

OFCCP estimates that 1 percent of all contractors, or 1,158, are new contractors that will need to initially develop a joint section 503 and VEVRAA affirmative action program. OFCCP estimates that it takes approximately 18 hours to document and maintain material evidence of developing the program. Therefore, the recordkeeping burden for this provision is 20,844 hours (1,158 contractor establishments × 18 hours = 20,844 hours).

60–300.44(f) External Dissemination of Policy, Outreach and Positive Recruitment

Section 60–300.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. OFCCP estimates that contractors will take 15 minutes to prepare the notification and send it to subcontractors, vendors, and suppliers, and an additional 15 minutes to update email address changes in the company's email system. Likewise, the burden for any information technology assistance needed to send the written communication is estimated at 15 minutes. The burden for this request is 86,873 hours (115,831 contractor establishments × 45 minutes/60 = 86,873 hours). This is a third-party disclosure.

Section 60–300.44(f)(4) requires contractors to document all outreach activities it undertakes for protected veterans, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 15 minutes to retain the required documentation. Retaining these records means storing the records generated either electronically or in hardcopy, consistent with the contractor's existing business practices for how to store records. The annual recordkeeping burden for this provision is 28,958 hours (115,831 contractor establishments × 15 minutes/ 60 = 28,958 hour).

Section 60–300.44(h) Audit and Reporting System

Section 60–300.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60–300.44(h). OFCCP estimates that it will take contractors 10 minutes to document compliance with this provision to create an audit and reporting system. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. The annual recordkeeping burden of this provision is 19,305 hours (115,831 contractor establishments × 10 minutes/60 = 19,305 hours).

Section 60–300.44(k) Data Collection and Analysis

Section 60–300(k) requires contractors to collect and analyze certain categories of data. OFCCP believes that most contractors have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 164,094 hours (115,831 contractor establishments × 85 minutes/60 = 164,094 hours).

Section 60–300.45 Benchmarks for Hiring

Section 60–300.45 requires the contractor to establish benchmarks in one of two ways. A contractor may use as its benchmark the national average number of veterans in the civilian labor force, which OFCCP will provide (and periodically update) on its public Web site. Or, alternatively, the contractor may establish its own individual benchmark using the five-factor method set forth in Section 60–300.45(b)(2)(i)–(v). OFCCP estimates that it will take contractors on average 10 minutes to maintain material evidence of compliance with this provision. The burden of this provision would be 19,305 hours (115,831 establishments × 10 minutes/60 = 19,305 hours).

Section 60–300.81 Access to Records

Section 60–300.81 requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA requirements because it is related to an "administrative action, investigation, or audit involving an agency against specific individuals or entities."

B. Summary of Costs

The estimated cost to contractors is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists total compensation for management, professional, and related occupations as $55.47 per hour and administrative support as $24.75 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support, for a weighted average of $40.72 per burden hour.

TABLE 1—SUMMARY OF RECORDKEEPING BURDEN HOURS AND COSTS FOR CONTRACTORS

Requirements	Burden hours	Burden costs
300.42 (Invitation to Self-Identify)	29,318	$14,659.20
300.44—Existing Contractors (Written Affirmative Action Program)	860,048	35,021,154.56
300.44—New Contractors (Written Affirmative Action Program)	20,844	848,767.68
300.44(f)(4) (Outreach and Recruitment Recordkeeping)	28,958	1,179,169.76
300.44(h) (Audit & Reporting System Recordkeeping)	19,305	786,099.60
300.44(k) (Data Collection Analysis)	164,094	6,681,907.68
300.45 (Benchmarks Recordkeeping)	19,305	786,099.60
Total	1,141,872	46,497,027.80

TABLE 2—SUMMARY OF THIRD PARTY DISCLOSURE BURDEN HOURS AND COSTS FOR CONTRACTORS

Requirements	Burden hours	Burden costs
300.5 (EO Clause, Parag 2—Mandatory Job Listing)	723,944	$29,478,999.68
300.5 (EO Clause, Parag 4—Contact Information)	290	11,808.80
300.5 (EO Clause, Parag 4—Job Search Orgs Contact Information)	24	977.28
300.44(f)(1) (Notice to Subcontractors, etc.)	86,873	3,537,468.56
Total	811,131	33,029,254.32

TABLE 3—SUMMARY OF THIRD PARTY DISCLOSURE BURDEN HOURS AND COSTS FOR NON-CONTRACTORS

Requirement	Burden hours	Burden costs
Section 60–300.42 (Self-Identification)	3,474,930	$116,688,149.40

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists an average total hourly compensation for all civilian workers of $33.58.

TABLE 4—TOTAL BURDEN FOR §§ 60–300.5; 60–300.42; 60–300.44; AND 60–300.45

Recordkeeping Burden Hours	1,141,872
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	4,286,061
Total Burden Hours	5,427,933

13. Operations and Maintenance Costs

OFCCP estimates that contractors will have some operations and maintenance costs in addition to the burden calculated above.

60–300.42 Invitation To Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one-page form for both the pre- and post-offer invitation. Assuming 20 percent of all contractors will use a paper-based application system, and receive 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $667,186.56 ((115,831 establishments × 20 percent) × 360 copies × $0.08 = $667,186.56).

14. Estimate of Annual Cost to Federal Government

OFCCP associates no unique federal costs with this information collection. OMB Control Numbers 1250–0001 and 1250–0003 currently include the annual costs of federal contractor compliance evaluations to ensure their compliance with the information collection requirements contained herein.

15. Changes in Burden Hours

OFCCP is requesting OMB approval of 5,427,933 burden hours. The 2014 clearance contained approval of 10,546,660 hours. The decrease in hours of the current request is attributable to OFCCP's proposal to use data from EEO–1 Reports to determine the number of covered contractors and contractor establishments instead of the methodology used in the previous information collection, which averaged data from multiple sources. EEO–1 data from fiscal year (FY) 2014 shows 23,960 federal contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments).

OFCCP believes that the EEO–1 Report provides the more accurate estimate of Federal contractors and establishments covered by this VEVRAA information collection. Section 60–1.7 requires specified Federal prime contractors and subcontractors to file an EEO–1 Report annually.[10]

Employers use the EEO–1 Report (question 3) to self-identify as federal contractors and subcontractors and indicate whether they meet the thresholds under E.O. 11246 for AAP coverage: 50 or more employees and $50,000 or more contract value.[11] The $50,000 contract threshold is less than the $150,000 contract value threshold for AAP coverage under VEVRAA. Thus, the number of contractors identified in the EEO–1 Reports will be greater than the number of contractors required to establish a VEVRAA AAP. Nevertheless, the number of contractors identified in the EEO–1 Reports provides a reasonable estimate for calculating the burden in this information collection, even if it overestimates the universe of contractors.[12] Any overestimate will be offset to some degree by the requirement that covered contractors must develop AAPs to cover employees at all of their establishments, even those with fewer than 50 employees. Any overestimate will be further offset to a small degree by the estimates for section 60–300.5 (Equal Opportunity Clause), which applies to contracts of $150,000 or more but has no employee threshold. Taking these considerations into account, OFCCP believes that the 115,831 contractor establishment total is a reasonable, if not perfect, estimate.

In the previous information collection approved in 2014 and in the VEVRAA final rule published in September 2013, OFCCP estimated the number of affected contractors and establishments to be 57,104 and 211,287, respectively. OFCCP now believes that these figures are an overestimate of the number of contractors with recordkeeping and third party disclosure burdens under this information collection. The numbers estimated in the final rule derived from a combination of data from FY 2009 EEO–1 Reports, the Federal Procurement Data System, the Veterans Employment and Training Services annual report, and other sources. See 78 FR 58658. The data from these sources is no longer current. Moreover, the methodology used to arrive at the estimates was based in large part on how OFCCP develops its Scheduling List of contractors for compliance evaluations. OFCCP develops its list of contractors for scheduling compliance evaluations by using multiple sources of information such as Federal acquisition and procurement databases, EEO–1 Reports, Dun & Bradstreet (D&B) data, and the U.S. Census Bureau tabulations. Statistical thresholds such as industry type and employee counts of contractor establishments are also used. The list may be further refined by applying a number of neutral factors such as contract expiration date and contract value on the number of establishments per contractor that will be scheduled in any one cycle. This methodology is appropriate for scheduling compliance evaluations, but it does not accurately reflect the number of contractors required to develop AAPs.

This distinction is recognized in the most recent Scheduling Letter and Itemized Listing ICR (Control Number

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[10] The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO–1 Report data to analyze employment patterns for women and minorities and as a civil rights enforcement tool. OMB approved the EEO–1 Report information collection under OMB No. 3046–0007. The information collection can be viewed at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201412-3046-001*. It is currently in the renewal process, and OMB most recently approved an extension of the ICR expiration date of October 31, 2016.

[11] 41 CFR 60–1.7—Reports and other required information.

[12] The number of contractors with contracts of at least $150,000 cannot be separately identified using the EEO–1 survey.

1250–0003), in which OFCCP estimated the number of contractors required to develop AAPs under E.O. 11246 using data from only the EEO–1 Reports, instead of the more complex methodology OFCCP uses to create its Scheduling Letter and Itemized Listing. Thus, to be consistent with that approach, OFCCP will now use data from only the EEO–1 Reports to estimate the number of contractors affected by this information collection, which consists primarily of recordkeeping and third party disclosures resulting from the VEVRAA AAP requirements.

A summary of the change in hours is below.

a. Recordkeeping Burden Hours

The previous submission included 2,205,468 hours. The current request is 1,141,872 hours for an adjustment decrease of 1,063,596 hours. This decrease is primarily a result of the use of the contractor totals from the EEO–1 Reports data, discussed above, but also includes adjustments due to requirements that are no longer applicable to existing contractors.

b. Third Party Disclosure Burden Hours

The previous submission included 8,341,192 hours. The current request is 4,286,061 hours for an adjustment decrease of 4,055,131 hours. This decrease is primarily a result of the use of the contractor totals from the EEO–1 Reports data, discussed above, but also includes adjustments due to requirements that are no longer applicable to existing contractors.

c. Other Burden Hours and Costs

The previous submission included 1,670,297 hours in initial capital or start-up costs and $1,217,002 in printing/copying costs. The current request no longer includes any initial capital and start-up costs, and estimates $667,186.56 for printing/copying. This is an adjustment decrease of 1,670,294 hours and $549,815.44. This decrease in printing/copying costs is exclusively a result of the use of the contractor totals from the EEO–1 Reports data, discussed above.

16. Statistical Uses and Publication of Data

OFCCP does not publish the data collected by way of the items contained in this request as statistical tables.

17. Approval Not To Display the Expiration Date

OFCCP is not seeking such approval.

18. Exceptions to the Certification Statement

OFCCP is able to certify compliance with all provisions.

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.

Note to Reviewer

The Office of Federal Contract Compliance Programs (OFCCP) requests Office of Management and Budget (OMB) approval for 4,392,369 hours in combined recordkeeping and third party disclosure burden hours for compliance by federal contractors and subcontractors with Section 503 of the Rehabilitation Act, as amended (29 U.S.C. 793). This compares with 10,229,910 hours in the most recently approved clearance request in 2014, a decrease of 5,837,541 (6,629,073 − 10,229,910 = −5,837,541) hours. This decrease reflects an adjustment in the number of affected federal contractors, which was overestimated in the previous information collection.

OFCCP will not be collecting any new or different information. The burden hours primarily represent those federal contractors and subcontractors that are required under Section 503 to develop, update, and maintain an affirmative action program. Reporting requirements under Section 503 are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing information collection request for nonconstruction supply and service federal contractors, separately approved under OMB Control Number 1250–0003.

As explained in Section 15 of this supporting statement, the decrease in burden hours for this information collection is largely a result of OFCCP's proposal to use data from Employer Information Report EEO–1 (EEO–1 Report) to determine the number of covered federal contractors and contractor establishments instead of the methodology used in the previous information collection, which averaged data from multiple sources. That methodology resulted in an overestimation of the number of affected contractors. The EEO–1 Report provides a more accurate estimate of contractors and establishments covered by Section 503. EEO–1 Report data from fiscal 2014 shows 23,960 federal contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments). In addition, the decrease in burden hours is a result of adjustments in the estimated time contractors need to complete the employee self-identification survey, to account for the five-year interval between having to conduct surveys, and for certain requirements in the Section 503 regulations that are only applicable to new contractors.

Supporting Statement

Department of Labor, OFCCP

OFCCP Recordkeeping and Reporting Requirements—29 U.S.C. 793 Section 503 of the Rehabilitation Act of 1973, as Amended

Control Number: 1250–0005

A. Justification

The Office of Federal Contract Compliance Programs (OFCCP) is responsible for administering three equal opportunity laws that prohibit discrimination based on particular protected categories and require affirmative action to provide equal employment opportunities:

- Executive Order 11246, as amended (E.O. 11246),[1]
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503),[2] and
- Vietnam Era Veterans' Readjustment Assistance Act of 1974,[3] as amended, 38 U.S.C. 4212 (VEVRAA).

E.O. 11246 prohibits federal contractors[4] from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, and national origin. E.O. 11246 also prohibits contractors from taking discriminatory actions, including firing, against applicants and employees for asking about or sharing information about their own compensation and, in certain instances, the compensation information of their co-workers.[5] E.O.

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[1] The regulations implementing Executive Order 11246 applicable to supply and service contractors are found at 41 CFR parts 60–1, 60–2, 60–3, 60–20, and 60–50.

[2] The regulations implementing Section 503 applicable to supply and service contractors are found at 41 CFR part 741.

[3] The regulations implementing VEVRAA applicable to supply and service contractors are found at 41 CFR part 60–300.

[4] As used herein and unless otherwise specified, the term "contractors" refers to federal contractors and subcontractors subject to the laws enforced by OFCCP. For E.O. 11246, the term also included federally assisted construction contractors and subcontractors.

[5] E.O. 13665 amended E.O. 11246 to include a prohibition on discrimination against any employee or applicant for inquiring about, discussing, or disclosing compensation or the compensation of

11246 applies to contractors holding a Government contract in excess of $10,000, or Government contracts that have, or can reasonably expect to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to Government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against applicants and employees based on disability and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on physical or mental disabilities. Its requirements apply to contractors with a Government contract in excess of $15,000.[6]

VEVRAA prohibits employment discrimination against protected veterans, namely disabled veterans, recently separated veterans, active duty wartime or campaign badge veterans, and Armed Forces service medal veterans, and requires contractors to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals without discrimination based on their status as a protected veteran. Its requirements apply to contractors with a Government contract of $150,000 or more.[7]

OFCCP promulgated regulations implementing these programs consistent with the Administrative Procedure Act. These regulations are found at Title 41 of the Code of Federal Regulations (CFR) in Chapter 60 and are accessible on the Web at *http://www.dol.gov/dol/cfr/Title_41/Chapter_60.htm.*

For purposes of OFCCP's recordkeeping and reporting requirements, the agency divides the obligations under these authorities into multiple information collection requests (ICRs).[8] These divisions are based on OFCCP's distinct enforcement authorities (*e.g.,* E.O. 11246 and VEVRAA each has its own recordkeeping ICR), programs, and related regulatory requirements.

The reporting requirements under Section 503 are not included in this information collection, but rather, are included in the Scheduling Letter and Itemized Listing ICR for nonconstruction supply and service contractors, separately approved under OMB Control Number 1250–0003.

Due to the pending expiration of OMB No. 1250–0005, OFCCP is seeking approval of the agency's Section 503 recordkeeping and third party disclosure requirements.

1. Legal and Administrative Requirements

Section 503

41 CFR 60–741—Affirmative Action and Nondiscrimination Obligations of Federal Contractors and Subcontractors Regarding Individuals With Disabilities

These regulations address the affirmative action and nondiscrimination obligations of contractors and subcontractors related to individuals with disabilities. They define coverage, specify clauses to be included in contracts, provide a procedure to ensure compliance by covered contractors, and specify certain reporting and recordkeeping requirements, establish an aspirational utilization goal of 7 percent, and specify the basic requirements for AAPs under Section 503.

Section 60–741.5 sets forth the equal opportunity clause in Federal contracts.

Section 60–741.40 requires the development and maintenance of a Section 503 AAP. This regulation requires each contractor and subcontractor that has 50 or more employees, and a contract of $50,000 or more, to develop an AAP at each establishment.

Section 60–741.42 requires contractors to invite job applicants at the pre-offer and post-offer stages to self-identify as individuals with a disability. In addition, the contractor is required to invite each of its employees to voluntarily self-identify as an individual with a disability. This employee survey must be conducted at five year intervals.

Section 60–741.44 identifies the required elements of an AAP, including those listed below.

- Develop and include an equal opportunity policy statement in the AAP.
- Review personnel processes to ensure that qualified individuals with disabilities are provided equal opportunity.
- Review all physical and mental job qualification standards to ensure that, to the extent any tend to screen out qualified individuals with disabilities on the basis of disability, that the standards are job-related and consistent with business necessity.
- Provide reasonable accommodations for physical and mental limitations.
- Develop and implement procedures to ensure that employees are not harassed because of their disability.
- Develop procedures and practices to disseminate affirmative action policies, both internally and externally, and undertake appropriate outreach and positive recruitment activities designed to effectively recruit qualified individuals with disabilities.
- Establish an audit and reporting system to measure the effectiveness of the AAP.
- Designate a responsible official to implement and oversee the AAP.
- Provide training to all personnel involved in the recruitment, screening, selection, promotion, disciplinary, and related processes to ensure that the commitments in the contractor's affirmative action program are implemented.
- Conduct data collection analysis pertaining to applicants and hires on an annual basis and maintain them for a period of three (3) years, including, the number of applicants who self-identified as individuals with disabilities or who are otherwise known to be individuals with disabilities; the total number of job openings and total number of jobs filled; the total number of applicants for all jobs; the number of applicants with disabilities hired; and the total number of applicants hired.

Section 60–741.45 establishes a 7 percent utilization goal for employment of individuals with disabilities for each job group in the contractor's workforce or to the entire workforce if the contractor has 100 or fewer employees. Contractors must conduct an annual utilization analysis and assessment of problem areas, and establish specific

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another employee or applicant. Executive Order 13665, Non-Retaliation for Disclosure of Compensation Information, 79 FR 20749 (April 11, 2014). The final rule published on September 11, 2015 and became effective on January 11, 2016. 80 FR 54934 (Sept. 11, 2015).

[6] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 75 CFR 53129 (Aug. 30, 2010).

[7] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See,* Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds, 80 FR 38293 (July 2, 2015).

[8] OFCCP's other current ICRs include: Construction Recordkeeping Requirements (OMB No. 1250–0001), Complaint Procedures (OMB No. 1250–0002), Supply and Service Program (Scheduling Letter and Itemized Listing) (OMB No. 1250–0003), VEVRAA Recordkeeping Requirements (OMB No. 1250–0004), Functional Affirmative Action Program Agreement Procedures (OMB No. 1250–0006), Government Contractors, Prohibitions Against Pay Secrecy Policies and Actions (OMB No. 1250–0008), and Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and Subcontractors (OMB No. 1250–0009). In the future, and as appropriate, OFCCP proposes to consolidate several of these ICRs.

action-oriented programs to address any identified problems.

Section 60–741.60 identifies the investigative methods OFCCP uses to evaluate a contractor's compliance with the agency's regulations. These methods range from an in-depth comprehensive evaluation of the contractor's employment practices (*i.e.* compliance review) to a narrowly focused analysis of a selected employment practice or policy (*i.e.* compliance check). Evaluation of compliance with Section 503 is concurrent with evaluation of a contractor's compliance with E.O. 11246 and VEVRAA.

2. Use of Materials

Section 60–741.42 outlines the requirements for contractors' obligations to invite individuals to self-identify as a person with a disability. This process enables the contractor to collect valuable data on the number of individuals with disabilities who apply for, are hired into, and are employed in federal contractor positions. If this data shows that the contractor is not meeting the utilization goal, the contractor must determine if impediments to equal employment opportunity for individuals with disabilities exist, and if so, develop and execute action-oriented programs to correct these problem areas.

The form that contractors use to invite voluntary self-identification of disability includes a field for applicants and employees to provide their name and the date. This is included to enable contractors to identify the job groups into which individuals should be placed when performing their utilization analysis. Identification by name enables OFCCP to verify the accuracy of a contractor's utilization analysis during a compliance evaluation.

Section 60–741.44 describes the required contents of a contractor's written affirmative action program. During a compliance evaluation, OFCCP reviews the contractor's affirmative action program to determine whether the contractor is complying with its obligations not to discriminate in employment and to take affirmative action to ensure equal employment opportunity.

Section 60–741.45 requires contractors to establish a national goal for the employment of individuals with disabilities by contractors, sets out the process contractors will use to assess whether the goal has been met, and requires contractors to maintain records of their assessment. This requirement provides contractors and OFCCP with a yardstick to objectively measure the effectiveness of nondiscrimination and affirmative action efforts.

3. Improved Information Technology

In general, under OFCCP regulations each contractor develops its own methods for collecting and maintaining information. Contractors have the option to use methods that best suit their needs as long as they can retrieve and provide OFCCP with the requested data upon request during a compliance evaluation.

The majority of contractors and subcontractors are repeat contractors. Since they are subject to OFCCP's regulatory requirements year after year, most have developed their information technology systems to generate the data required by OFCCP regulations.

Information technology systems used to comply with data requirements under OFCCP's regulations should be capable of performing the below functions.

- Collecting employment activity data related to Section 503
- Conducting Section 503 utilization analysis
- Analyzing outreach and recruitment
- Tracking self-identification
- Disseminating internal and external EO policies
- Providing notice to subcontractors and vendors
- Auditing and reporting of AAP program elements

In addition, OFCCP provides compliance assistance to all contractors, including smaller contractors by leveraging information technology. For example, OFCCP's Web site provides access to compliance resources and information, including the following.

- Section 503 Contractor Resources *http://www.dol.gov/ofccp/regs/compliance/Resources.htm*
- Fact Sheets, Frequently Asked Questions and Webinar training *http://www.dol.gov/ofccp/regs/compliance/section503.htm*
- Sample AAPs *http://www.dol.gov/ofccp/regs/compliance/AAPs/AAPs.htm*
- Disability and Veterans Community Resources Directory: *https://ofccp.dol-esa.gov/errd/Resources.503VEVRAA.html*
- Employment Resource Referral Directory: *https://ofccp.dol-esa.gov/errd/index.html*
- Checklist for Compliance with Section 503: *http://www.dol.gov/ofccp/regs/compliance/ChecklistforCompliancewithSection503_JRF_QA_508c.pdf*

OFCCP believes that advances in technology make contractor compliance with the recordkeeping and reporting requirements easier and less burdensome. However, in the absence of empirical data, OFCCP is unable to quantify the impact of improved information technology and thus, OFCCP does not include it in the calculation of burden hours.

According to the Government Paperwork Elimination Act (GPEA, Pub. L. 105–277, 1998), by October 2003, Government agencies must generally provide the option of using and accepting electronic documents and signatures, and electronic recordkeeping, where practicable. OFCCP fulfills its GPEA requirements by permitting contractors to submit AAPs and supporting documentation via email or other electronic format.

4. Description of Efforts To Identify Duplication

The recordkeeping requirements contained in this request result exclusively from the implementation of Section 503. This authority uniquely empowers the Secretary of Labor, and by a Secretary's Order, the OFCCP, to require the collection, analysis, and reporting of data and other information in connection with the enforcement of the law and regulations requiring Government contractors to take affirmative action to ensure equal employment opportunity. No duplication of effort exists because no other Government agency has these specific data collection requirements.

While contractors maintain other employment data in the normal course of business, affirmative action programs under Section 503 are unique in that contractors create them specifically to meet the requirements of OFCCP regulations. This comprehensive document is not available from any other source. Therefore, no duplication of effort exists.

5. Collection From Small Organizations

OFCCP's information collection does not have a significant economic impact on a substantial number of small entities. OFCCP minimizes the information collection and recordkeeping burden on a significant number of small businesses by exempting contractor establishments with fewer than 50 employees from the AAP requirement. However, once OFCCP's authority covers one contractor's establishment, all of its employees must be accounted for in an AAP whether or not each of the contractor's establishments meet the minimum 50 employees threshold.[9]

OFCCP also minimized the burden of the information collection requirements on small entities by giving contractors with a total workforce of 100 or fewer employees the option to compare the individuals with disabilities in their entire workforce to the 7 percent utilization goal, whereas larger contractors must measure utilization for each job group. This will decrease the burden of the utilization analysis.

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[9] 41 CFR 60–741.40—Applicability of the affirmative action program.

6. Consequences for Federal Programs if This Information Is Collected Less Frequently

The requirements outlined in this ICR ensure that covered contractors and subcontractors meet their equal opportunity obligations to individuals with disabilities as described in Section 503. The nondiscrimination requirements and general affirmative action requirements of Section 503 apply to all covered contractors. *See* 41 CFR 60–741.4. The requirement to prepare and maintain an affirmative action program, the specific obligations of which are detailed at 41 CFR 60–741.44, apply to those contractors with a Government contract of $50,000 or more and 50 or more employees.

If this information is collected less frequently, it could compromise OFCCP's enforcement of Section 503 and its implementing regulations. OFCCP reviews contractor compliance through its compliance evaluation process. *See* 41 CFR 60–741.60. In order to accurately determine compliance, both OFCCP and the contractor must be able to analyze contractor actions taken and results obtained. Additionally, the data collection frequency for this ICR largely mirrors that of OFCCP's other programs, particularly the E.O. 11246 supply and service program, as Section 503 compliance evaluations are conducted concurrently with that program.

As noted under the supply and service ICR (OMB No. 1250–0003), the older the data the greater the chances are that more qualified workers are victims of discrimination and that the discrimination continues for a longer period. A consequence of such older data may be that the scope of the violation, resulting harm and the overall burden of contractor compliance are greater.

7. Special Circumstances for the Collection of Information

There are no special circumstances for the collection of this information.

8. Consultation Outside the Agency

OFCCP publishes all regulations containing recordkeeping or reporting requirements in the **Federal Register** for public comment before agency adoption. In addition, OFCCP maintains an ongoing dialogue, through compliance assistance, with contractor groups on a number of compliance issues, among them reporting and recordkeeping.

OFCCP will address comments received from the public under this paragraph at the end of the 60-day **Federal Register** comment period.

9. Gift Giving

OFCCP provides neither payments nor gifts to respondents.

10. Assurance of Confidentiality

Contractors who submit the required information may view it as sensitive information. OFCCP will evaluate all information pursuant to the public inspection and disclosure provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Labor's implementing regulations at 29 CFR part 70. OFCCP requires that a contractor affected by a FOIA disclosure request be notified in writing and no decision to disclose information is made until the contractor has an opportunity to submit objections to the release of the information. Furthermore, it is OFCCP's position that it does not release any data obtained during the course of a compliance evaluation until the matter is completed.

11. Sensitive Questions

Section 503 requires contractors to provide a form to applicants and employees asking them to voluntarily self-identify as an individual with a disability and informing them of their right to request reasonable accommodation, if it is needed. This data is necessary to enable OFCCP to assess contractors' compliance with Section 503 and ensure that individuals with disabilities are being accorded equal employment opportunity. The information will also enable contractors to assess their utilization of qualified individuals with disabilities and their outreach efforts and recruitment of such individuals with disabilities. The form states clearly that the submission of the requested information is voluntary, and that the data is collected and maintained strictly for affirmative action purposes and will otherwise be kept confidential. Race and sex data are not required under the Section 503 regulations.

12. Estimate of Annual Information Collection Burden

The following is a summary of the methodology for the calculation of the recordkeeping and third party disclosure requirements for OFCCP's Section 503 ICR.

As noted at the beginning of this supporting statement, the total in combined recordkeeping and third party disclosure burden hours for this ICR (4,392,369) is less than the total number of hours approved in 2014 (10,229,910), as detailed in Sec. 15 below.

A. Information Collections

Standard Form—Voluntary Self-Identification of Disability

Pursuant to § 60–741.42, contractors use the standard form entitled "Voluntary Self-Identification of Disability" to invite applicants, hires, and employees to identify as an individual with a disability pre-offer, post-offer, and through periodic invitations to all employees.

Section 60–741.42(a) requires contractors to extend a pre-offer invitation to self-identify as an "individual with a disability." In the previous information collection, OFCCP estimated that contractors working at the company level will take 1.5 hours to review and retrieve existing sample invitations to self-identify, adopt the sample "as is" or make revisions to their existing form, save the invitation to self-identify and incorporate the document in the contractor's application form. Existing contractors will no longer need to take these steps to comply with the pre-offer invitation requirement, so the estimated burden in this information collection applies to only new contractor parent companies, or 1 percent of the 23,960 contractor companies. The burden for this provision is 360 hours (240 new contractor companies × 1.5 hours = 360 hours).

Applicants for available positions with covered contractors will have a minimal burden complying with § 60–741.42(a) in the course of completing their application for employment with the contractor. Section 60–741.42(a), on pre-offer self-identification, requires contractors to invite all applicants to self-identify whether or not they are an individual with a disability. OFCCP estimates that there will be an average of 24 applicants per job vacancy for on average 15 vacancies per year. OFCCP further estimates that it will take applicants approximately 5 minutes to complete the form. The burden for this provision is 3,474,930 hours (115,831 contractor establishments × 15 listings × 24 applicants × 5 minutes/60 = 3,474,930 hours). This is a third-party disclosure.

In the previous information collection, OFCCP estimated that it will take contractors 1.5 hours to conduct the invitation to self-identify employee survey. This includes the time needed to set up procedures to conduct the invitation, distribute communications, and collect and track self-identification forms. OFCCP believed this process would become much more streamlined over time and require significantly less than 1.5 hours in subsequent years. Therefore, for this information collection, OFCCP estimates that it will take contractors 1 hour to conduct the invitation to self-identify survey. Contractors are required to conduct the survey at five-year intervals. The estimated annual burden for this provision is 23,166 hours (115,831 contractor establishments × 1 hour/5 years = 23,166 hours).

Contractor employees will have to spend some time reviewing and/or completing the survey. There are approximately 31,626,890 contractor employees. OFCCP estimates that employees will take 5 minutes to complete the self-identification form. The burden for this provision, assuming every employee completes the form, is 527,115 hours ((31,626,890 employees × 5 minutes/60)/5 years = 527,115 hours). Utilizing Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists an average total compensation for all civilian workers as $33.58 per hour, the cost of this provision would be $17,700,521.70. This is a third-party disclosure.

OFCCP further estimates that it will take contractors 15 minutes to maintain self-identification forms. This time includes either manually storing the forms in a filing cabinet or saving them to an electronic database. The burden for this provision is 28,958 hours (115,831 contractor establishments × 15 minutes/60 = 28,958 hours).

Section 60–741.44 Required Contents of the Affirmative Action Program

OMB Control Number 1250–0004 contains the burden estimates for documenting and maintaining material evidence of annually updating and, for new contractors, developing parts of a joint Section 503 and VEVRAA affirmative action program. Therefore, there is no additional burden for those parts of the Section 503 AAP in this information collection request. OFCCP separately identifies provisions below that are not included in burden estimates currently approved by 1250–0004.

Section 60–741.44(f) External Dissemination of Policy, Outreach and Positive Recruitment

Section 60–741.44(f)(1)(ii) requires contractors to send written notification of the company's affirmative action program policies to subcontractors, vendors, and suppliers. Section 60–300.44(f)(1)(ii) of the VEVRAA regulations also requires contractors to send written notification of the company policy related to its affirmative action efforts to all subcontractors, including subcontracting vendors and suppliers. OFCCP therefore expects that contractors will send a single, combined notice, informing subcontractors, vendors and suppliers of their VEVRAA and Section 503 policies. Accordingly, OFCCP estimates that there is no additional burden for this provision than what was already calculated in the companion ICR for VEVRAA Recordkeeping Requirements (OMB No. 1250–0004).

Section 60–741.44(f)(4) requires a contractor to document all outreach activities it undertakes for individuals with disabilities, and retain these documents for a period of 3 years. OFCCP estimates that it will take contractors 10 minutes to maintain the outreach and recruitment documentation that would typically be generated as a result of their obligations pursuant to other provisions in the regulations. This does not include any additional time to make the software configuration needed on the contractor's computer system to store data for an additional year, as this burden was previously accounted for in the VEVRAA ICR's burden analysis of § 60–300.80(b). Therefore, the recurring burden for this provision is 19,305 hours (115,831 contractor establishments × 10 minutes/60 = 19,305 hours).

Section 60–741.44(h) Audit and Reporting System

Section 60–741.44(h)(1)(vi) requires contractors to document the actions taken to meet the requirements of 60–741.44(h), as mandated in the current regulations. OFCCP estimates that it will take contractors 10 minutes to document compliance with this existing provision. Documentation may include, as an example, the standard operating procedure of the system including roles and responsibilities, and audit and reporting timeframes and lifecycles. The annual recordkeeping burden of this provision is 19,305 hours (115,831 contractor establishments × 10 minutes/60 = 19,305 hours).

Section 60–741.44(k) Data Collection and Analysis

Section 60–741.44(k) requires contractors to collect and analyze certain categories of data. OFCCP believes that most contractors have the capability to conduct the required calculations electronically. However, some companies may have to calculate this information manually. Therefore, OFCCP estimates that the average time to conduct the analysis and maintain the relevant documentation would be 1 hour 25 minutes. Relevant documentation could include the report or other written documentation generated by the calculations that explain the methodology, the data used, and the findings and conclusions; the data used to conduct the calculations for subsequent validation of the results; and other material used by the contractor for the calculations. The recurring burden for this provision is 164,094 hours (115,831 contractor establishments × 85 minutes/60 = 164,094 hours).

Section 60–741.45 Utilization Goal

Section 60–741.45 requires contractors to conduct a utilization analysis to evaluate the representation of individuals with disabilities in each job group within the contractor's workforce with the utilization goal established in paragraph (a) of this section. OFCCP estimates that contractors will take 1 hour to conduct the utilization analysis. The burden for this provision is 115,831 hours (115,831 contractor establishments × 1 hour = 115,831 hours).

OFCCP further estimates that it will take contractors an additional 10 minutes to maintain records of the utilization analysis. The recordkeeping burden is 19,305 hours (115,831 contractor establishments × 10 minutes/60 = 19,305 hours).

Section 60–741.81 Access to Records

Section 60–741.81 requires contractors who are the subject of a compliance evaluation or complaint investigation to specify all available record formats and allow OFCCP to select preferred record formats from those identified by the contractor during a compliance evaluation. Pursuant to the regulations implementing the PRA at 5 CFR 1320.4(a)(2), this information collection is excluded from the PRA requirements because it is related to an "administrative action, investigation, or audit involving an agency against specific individuals or entities."

B. Summary of Costs

The estimated recordkeeping cost to contractors is based on Bureau of Labor

Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists total compensation for management, professional, and related occupations as $55.47 per hour and administrative support as $24.75 per hour. OFCCP estimates that 52 percent of the burden hours will be management, professional, and related occupations and 48 percent will be administrative support, for a weighted average of $40.72 per burden hour.

TABLE 1—SUMMARY OF RECORDKEEPING BURDEN HOURS AND COSTS FOR CONTRACTORS

Requirements	Burden hours	Burden costs
741.42 (Employee Survey)	23,166	$943,319.52
741.42 (Modifying Application System)	360	14,659.20
741.42 (Self-Identification Recordkeeping)	28,958	1,179,169.76
741.44(f)(4) (Recordkeeping Outreach Activities)	19,305	786,099.60
741.44(h) (Recordkeeping Affirmative Action Program Audit)	19,305	786,099.60
741.44(k) (Data Collection and Analysis)	164,094	6,681,907.68
741.45 (Utilization Analysis)	115,831	4,716,638.32
741.45 (Utilization Analysis Recordkeeping)	19,305	786,099.60
Total	390,324	15,893,993.28

TABLE 2—SUMMARY OF THIRD PARTY DISCLOSURE BURDEN HOURS AND COSTS FOR CONTRACTORS

Requirement	Burden hours	Burden costs
741.42 (Employee Survey)	527,115	$17,700,521.70

The estimated cost for contractor employees to complete the self-identification survey is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists an average total hourly compensation for all civilian workers of $33.58.

TABLE 3—SUMMARY OF THIRD PARTY DISCLOSURE BURDEN HOURS AND COSTS FOR NON-CONTRACTORS

Requirement	Burden hours	Burden costs
Section 60–741.42 (Self-Identification)	3,474,930	$116,688,149.40

The total estimated cost for applicants to fill out the self-identification form is based on Bureau of Labor Statistics data in the publication "Employer Costs for Employee Compensation" (December 2015), which lists an average total hourly compensation for all civilian workers of $33.58.

TABLE 4—TOTAL BURDEN FOR §§ 60–741.42; 60–741.44; AND 60–741.45

Recordkeeping Burden Hours	390,324
Reporting Burden Hours	0
Third Party Disclosure Burden Hours	4,002,045
Total Burden Hours	4,392,369

13. Operations and Maintenance Costs

OFCCP estimates that contractors will have some operations and maintenance costs in addition to the burden calculated above.

60–741.42 Invitation to Self Identify

OFCCP estimates that the contractor will have some operations and maintenance cost associated with the invitations to self-identify. The contractor must invite all applicants to self-identify at both the pre-offer and post-offer stage of the employment process. Given the increasingly widespread use of electronic applications, any contractor that uses such applications would not incur copy costs. However, to account for contractors who may still choose to use paper applications, we are including printing and/or copying costs. Therefore, we estimate a single one page form for both the pre- and post-offer invitation. Assuming 20 percent of all contractors will use a paper-based application system, and receive 24 applications for an average of 15 listings per establishment, the minimum estimated total cost to contractors will be $667,186.56 ((115,831 establishments × 20 percent) × 360 copies × $0.08 = $667,186.56).

14. Estimate of Annual Cost to Federal Government

OFCCP associates no unique federal costs with this information collection. OMB Control Numbers 1250–0001 and 1250–0003 currently include the annual costs of federal contractor compliance evaluations to ensure their compliance with the information collection requirements contained herein.

15. Changes in Burden Hours

OFCCP is requesting OMB approval of 4,392,369 burden hours. The 2014 clearance contained approval of 10,229,910 hours. The decrease in hours of the current request is attributable largely to OFCCP's proposal to use data from EEO–1 Reports to determine the number of covered contractors and contractor establishments instead of the methodology used in the previous information collection, which averaged data from multiple sources. EEO–1 data from FY 2014 shows 23,960 contractor parent companies filed reports, with 115,831 total contractor establishments. These numbers are significantly less than the estimates used in the previous information collection (57,104 contractor companies and 211,287 contractor establishments).

OFCCP believes that the EEO–1 Report provides the more accurate estimate of contractors and establishments covered by this Section 503 information collection. Section 60–1.7 requires specified Federal prime contractors and subcontractors to file an EEO–1 Report annually.[10]

Employers use the EEO–1 Report (question 3) to self-identify as contractors and subcontractors and indicate whether they meet the thresholds under E.O. 11246 for AAP coverage: 50 or more employees and $50,000 or more contract value.[11] This employee and contract value threshold is the same jurisdictional threshold for AAP coverage under Section 503. Thus, the number of contractors identified in the EEO–1 Reports should be equal to the number of contractors required to establish a Section 503 AAP, making the EEO–1 Reports the most accurate source for estimating the number of covered contractors subject to this information collection.

In the previous information collection approved in 2014 and in the Section 503 final rule published in September 2013, OFCCP had estimated the number of affected contractors and establishments to be 57,104 and 211,287, respectively. OFCCP now believes that these figures are an overestimate of the number of contractors with recordkeeping and third party disclosure burdens under this information collection. The numbers estimated in the final rule derived from a combination of data from FY 2009 EEO–1 Reports, the Federal Procurement Data System, the Veterans Employment and Training Services annual report, and other sources. See 78 FR 58729. The data from these sources is no longer current. Moreover, the methodology used to arrive at the estimates was based in large part on how OFCCP develops its Scheduling List of contractors for compliance evaluations. OFCCP develops its list of contractors for scheduling compliance evaluations by using multiple sources of information such as Federal acquisition and procurement databases, EEO–1 Reports, Dun & Bradstreet (D&B) data, and the U.S. Census Bureau tabulations. Statistical thresholds such as industry type and employee counts of contractor establishments are also used. The list may be further refined by applying a number of neutral factors such as contract expiration date and contract value on the number of establishments per contractor that will be scheduled in any one cycle. This methodology is appropriate for scheduling compliance evaluations, but it does not accurately reflect the number of contractors required to develop AAPs.

This distinction is recognized in the most recent Scheduling Letter and Itemized Listing ICR (Control Number 1250–0003), in which OFCCP estimated the number of contractors required to develop AAPs under E.O. 11246 using data from only the EEO–1 Reports, instead of the more complex methodology OFCCP uses to create its Scheduling Letter and Itemized Listing. Thus, to be consistent with that approach, OFCCP will now use data from only the EEO–1 Reports to estimate the number of contractors affected by this information collection, which consists of recordkeeping and third part disclosures resulting from the Section 503 AAP requirements.

In addition, the decrease in burden hours is a result of adjustments in the estimated time contractors need to complete the employee self-identification survey, to account for the five-year interval between having to conduct surveys, and for certain requirements in the Section 503 regulations that are only applicable to new contractors.

A summary of the change in hours is below.

a. Recordkeeping Burden Hours

The previous submission included 862,756 hours. The current request is 390,324 hours for an adjustment decrease of 472,432 hours. This decrease is a result of the use of the contractor totals from the EEO–1 Reports data, discussed above, as well as adjustments in the time estimated for contractors to conduct the invitation to self-identify survey under section 60–741.42(a), to reflect that the survey is to be completed at five-year intervals, and to account for requirements that are applicable only to new contractors.

b. Third Party Disclosure Burden Hours

The previous submission included 9,367,154 hours. The current request is 4,002,045 hours for an adjustment decrease of 5,365,109 hours. This decrease is primarily a result of the use of the contractor totals from the EEO–1 Reports data, discussed above, as well as an adjustment to account for the requirement that contractor employees are invited to complete the self-identification survey only once every five years.

c. Other Burden Hours and Costs

The previous submission included 1,556,089 hours in initial capital or start-up costs and $1,217,002 in printing/copying costs. The current request no longer includes any initial capital and start-up costs, and estimates $667,186.56 for printing/copying. This is an adjustment decrease of 1,556,089 hours and $549,815.44. This decrease in printing/copying costs is exclusively a result of the use of the contractor totals from the EEO–1 Reports data, discussed above.

16. Statistical Uses and Publication of Data

OFCCP does not publish the data collected by way of the items contained in this request as statistical tables.

17. Approval not to Display the Expiration Date

OFCCP is not seeking such approval.

18. Exceptions to the Certification Statement

OFCCP is able to certify compliance with all provisions.

B. Collection of Information Employing Statistical Methods

This information collection does not employ statistical methods.

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[10] The U.S. Equal Employment Opportunity Commission (EEOC) and OFCCP use EEO–1 Report data to analyze employment patterns for women and minorities and as a civil rights enforcement tool. OMB approved the EEO–1 Report information collection under OMB No. 3046–0007. The information collection can be viewed at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201412-3046-001*. It is currently in the renewal process, and OMB most recently approved an extension of the ICR expiration date of October 31, 2016.

[11] 41 CFR 60–1.7—Reports and other required information.

Voluntary Self-Identification of Disability
Form CC-305
OMB Control Number 1250-0005
Expires X/X/XXXX
Page 209 of 39

Why are you being asked to complete this form?

Because we do business with the government, we must reach out to, hire, and provide equal opportunity to qualified people with disabilities.[1] To help us measure how well we are doing, we are asking you to tell us if you have a disability or if you ever had a disability. Completing this form is voluntary, but we hope that you will choose to fill it out. If you are applying for a job, any answer you give will be kept private and will not be used against you in any way.

If you already work for us, your answer will not be used against you in any way. Because a person may become disabled at any time, we are required to ask all of our employees to update their information every five years. You may voluntarily self-identify as having a disability on this form without fear of any punishment because you did not identify as having a disability earlier.

How do I know if I have a disability?

You are considered to have a disability if you have a physical or mental impairment or medical condition that substantially limits a major life activity, or if you have a history or record of such an impairment or medical condition.

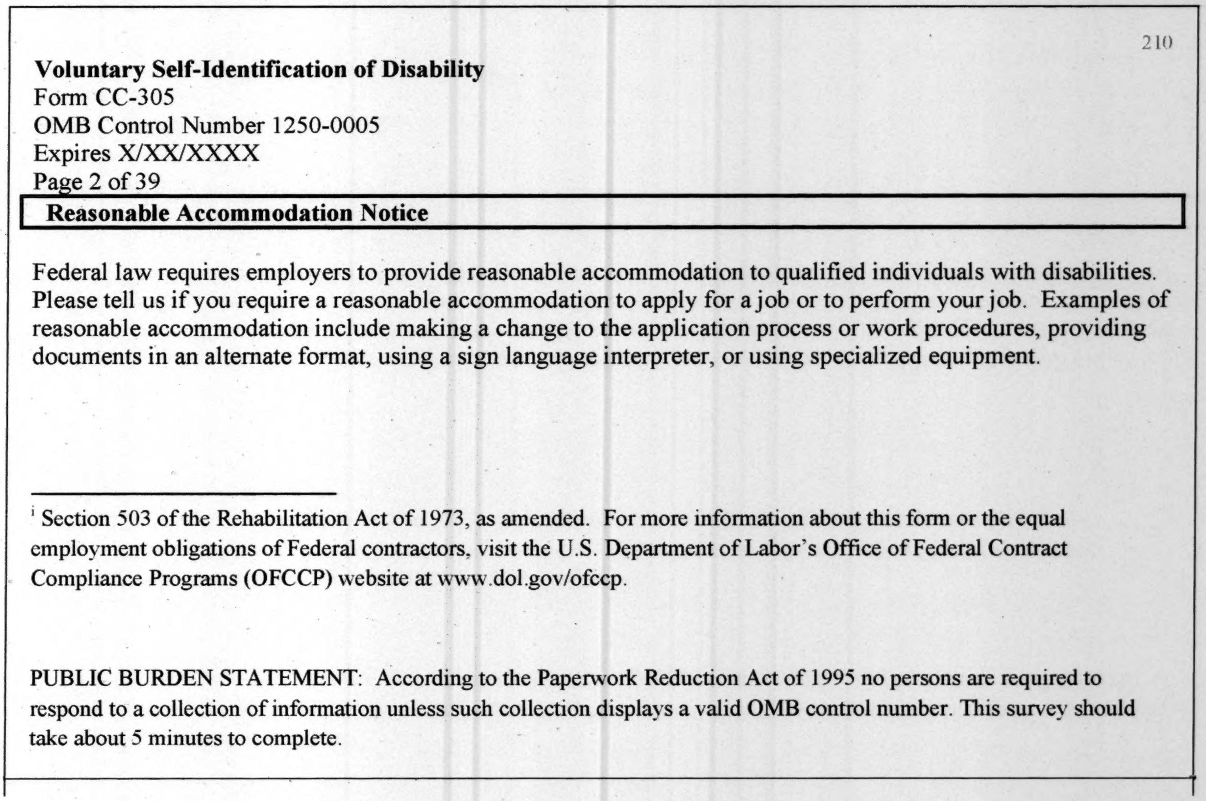
Disabilities include, but are not limited to:

- Blindness
- Deafness
- Cancer
- Diabetes
- Epilepsy
- Autism
- Cerebral palsy
- HIV/AIDS
- Schizophrenia
- Muscular dystrophy
- Bipolar disorder
- Major depression
- Multiple sclerosis (MS)
- Missing limbs or partially missing limbs
- Post-traumatic stress disorder (PTSD)
- Obsessive compulsive disorder
- Impairments requiring the use of a wheelchair
- Intellectual disability (previously called mental retardation)

Please check one of the boxes below:

☐ YES, I HAVE A DISABILITY (or previously had a disability)
☐ NO, I DON'T HAVE A DISABILITY
☐ I DON'T WISH TO ANSWER

Your Name ______________
Today's Date ______________



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Voluntary Self-Identification of Disability
Form CC-305
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Reasonable Accommodation Notice

Federal law requires employers to provide reasonable accommodation to qualified individuals with disabilities. Please tell us if you require a reasonable accommodation to apply for a job or to perform your job. Examples of reasonable accommodation include making a change to the application process or work procedures, providing documents in an alternate format, using a sign language interpreter, or using specialized equipment.

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[i] Section 503 of the Rehabilitation Act of 1973, as amended. For more information about this form or the equal employment obligations of Federal contractors, visit the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) website at www.dol.gov/ofccp.

PUBLIC BURDEN STATEMENT: According to the Paperwork Reduction Act of 1995 no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This survey should take about 5 minutes to complete.

[FR Doc. 2016–20469 Filed 8–25–16; 8:45 a.m.]

BILLING CODE 4510–CM–C

DEPARTMENT OF LABOR

Office of the Secretary, DOL

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Registered Apprenticeship College Consortium

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, "Registered Apprenticeship College Consortium," to the Office of Management and Budget (OMB) on August 31, 2016, for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 30, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201607-1205-003* (this link will only become active on September 1, 2016) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor—OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Registered Apprenticeship College Consortium (RACC) information collection that facilitates awarding a registered apprenticeship completion certificate towards college credit. RACC post-secondary educational institution members agree to accept apprentice graduates from member registered apprenticeship sponsors with the approximate amount of credit towards college that has been designated by a third party evaluator. The information collection includes three application forms to join the consortium; there are three types of membership and separate applications for each type of member. This information collection has been classified as a revision, because the ETA has decided not to pursue completion of an on-line registration system. National Apprenticeship Act section 1 authorizes this information collection. *See* 29 U.S.C. 50.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0521. The current approval is scheduled to expire on August 31, 2016; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 17, 2016 (81 FR 14486).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by September 30, 2016. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0512. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Registered Apprenticeship College Consortium.

OMB Control Number: 1205–0512.

Affected Public: Federal Government; State, Local, and Tribal Governments; and Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 185.

Total Estimated Number of Responses: 185.

Total Estimated Annual Time Burden: 32 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 22, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–20510 Filed 8–25–16; 8:45 am]

BILLING CODE 4510–FR–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Division of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Or by email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On July 18, 2016, the National Science Foundation published a notice in the **Federal Register** of a permit modification request received. The permit modification was issued on August 23, 2016 to:

Allyson Hindle, Permit No. 2016–005

Nadene G. Kennedy,

Polar Coordination Specialist, Division of Polar Programs.

[FR Doc. 2016–20513 Filed 8–25–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 8–10, 2016, 11545 Rockville Pike, Rockville, Maryland.

Thursday, September 8, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Turkey Point Combined License Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power & Light Company regarding the safety evaluation associated with the Turkey Point Combined License Application (Units 6 and 7).

10:45 a.m.–12:15 p.m.: Review of Safety Evaluation Associated with Diablo Canyon Power Plant Units 1 and 2, Digital Replacement of Process Protection System (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the safety evaluation associated with the above subject.

1:30 p.m.–3:30 p.m.: Fermi-2 License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the safety evaluation associated with the Fermi 2 license renewal application.

3:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting.

Friday, September 9, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:35 a.m.–10:00 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [**Note:** A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

10:00 a.m.–10:15 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

10:30 a.m.–11:30 a.m.: Research Quality Review Panels (Open)—The Committee will discuss the Office of Nuclear Regulatory Research projects.

12:30 p.m.–1:30 p.m.: Preparation for October Meeting with the Commission (Open)—The Committee will discuss presentations for the upcoming meeting with the Commission.

1:30 p.m.–6:00 p.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports discussed during this meeting.

Saturday, September 10, 2016, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland

8:30 a.m.–11:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

11:30 a.m.–12:00 p.m.: Miscellaneous (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2015 (80 FR 63846). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff (Telephone: 301–415–5844, Email: *Quynh.Nguyen@nrc.gov*), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr.resource@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated at Rockville, Maryland, this 22nd day of August, 2016.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 2016–20514 Filed 8–25–16; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Notice

TIME AND DATE: Thursday, September 15, 2016, 2 p.m. (OPEN Portion); 2:15 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 2 p.m. to 2:15 p.m. Closed portion will commence at 2:15 p.m. (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report
2. Tribute—Stefan Selig
3. Minutes of the Open Session of the June 9, 2016 Board of Directors Meeting

FURTHER MATTERS TO BE CONSIDERED (Closed to the Public 2:15 p.m.):

1. Finance Project—India
2. Finance Project—India
3. Finance Project—Senegal
4. Insurance Project—Senegal
5. Finance Project—South Africa
6. Finance Project—Jamaica
7. Finance Project—Honduras
8. Minutes of the Closed Session of the June 9, 2016 Board of Directors Meeting
9. Reports
10. Pending Projects

CONTACT PERSON FOR MORE INFORMATION: Information on the meeting may be obtained from Catherine F. I. Andrade at (202) 336–8768, or via email at *Catherine.Andrade@opic.gov.*

Dated: August 23, 2016.

Catherine F. I. Andrade,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 2016–20585 Filed 8–24–16; 11:15 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–265]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 30, 2016

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the

Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–265; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1D Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* August 22, 2016; *Filing Authority:* 39 CFR 3015.5 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* August 30, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–20503 Filed 8–25–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78626; File No. SR–NASDAQ–2016–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change, As Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the Amplify Dow Theory Forecasts Buy List ETF of Amplify ETF Trust

August 22, 2016.

I. Introduction

On May 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Amplify Dow Theory Forecasts Buy List ETF ("Fund") of Amplify ETF Trust ("Trust"). On May 20, 2016, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 31, 2016.[3] On July 5, 2016, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comment letters on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which was established as a Massachusetts business trust on January 6, 2015.[6] According to the Exchange, the Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[7] The Fund, which will be an actively-managed exchange-traded fund ("ETF"), will be a series of the Trust.

Amplify Investments LLC will be the investment adviser ("Adviser") to the Fund. The following entities will serve as investment sub-advisers (collectively, "Sub-Adviser") to the Fund: Horizon Investment Services, LLC ("Horizon") and Penserra Capital Management LLC ("Penserra"). Quasar Distributors LLC will be the principal underwriter and distributor of the Fund's Shares. U.S. Bancorp Fund Services LLC will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. The Exchange represents that neither the Adviser nor any Sub-Adviser is a broker-dealer, although Penserra is affiliated with a broker-dealer.[8] Penserra has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.

The Exchange has made the following representations and statements in describing the Fund and its investment strategies, including the Fund's portfolio holdings and investment restrictions.[9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77890 (May 24, 2016), 81 FR 34419 ("Notice").

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78225, 81 FR 44902 (July 11, 2016).

[6] The Exchange represents that the Trust has obtained certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 31582 (April 28, 2015) (File No. 812–14423).

[7] *See* Post-Effective Amendment No. 2 to Registration Statement on Form N–1A for the Trust, dated May 5, 2016 (File Nos. 333 207937 and 811 23108).

[8] The Exchange further represents that Adviser and Horizon are not currently affiliated with a broker-dealer. In addition, the Exchange states that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. In the event (a) the Adviser or a Sub-Adviser registers as a broker-dealer, or becomes affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement and will maintain a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, and changes to, the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.

[9] The Commission notes that additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, net asset value ("NAV") calculation, creation and redemption procedures, fees, Fund holdings disclosure policies, distributions, and taxes, among other information, is included in the Notice, as modified by Amendment No. 1 thereto, and the Registration Statement, as applicable. *See* Notice and Registration Statement, *supra* notes 3 and 7, respectively, and accompanying text.

A. Exchange's Description of the Fund's Principal Investments

The investment objective of the Fund will be to seek long-term capital appreciation. Under normal market conditions,[10] the Fund will seek to achieve its investment objective by investing at least 90% of its net assets (including investment borrowings) in companies included in the buy list (updated on a semi-weekly basis) ("Buy List") of the *Dow Theory Forecasts,* an investment newsletter of Horizon Publishing Company, LLC, an affiliate of Horizon. In general, the Buy List includes 25 to 40 U.S. exchange-traded stocks. All of such stocks are large-cap or mid-cap and are selected based on a proprietary quantitative ranking system known as Quadrix®. Quadrix® ranks approximately 5,000 stocks and scores target stocks based on their operating momentum; valuation; long-term term track record and financial strength; earnings-estimate trends; and share-price performance.

The Fund will seek diversification among the ten economic sectors of the U.S. stock market, and it is not anticipated that more than 45% of the portfolio will be invested in a single sector. Horizon will select the Fund's portfolio securities from the Buy List. Penserra will be responsible for implementing the Fund's investment program by, among other things, trading portfolio securities and performing related services, rebalancing the Fund's portfolio, and providing cash management services in accordance with the investment advice formulated by, and model portfolios delivered by, the Adviser and Horizon.

B. Exchange's Description of the Fund's Other Investments

The Fund may invest the remaining 10% of its net assets in short-term debt securities and other short-term debt instruments (described below), as well as cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings or held in cash will vary and will depend on several factors, including market conditions. The Fund may invest in the following short-term debt instruments:[11] (1) Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities; (2) certificates of deposit issued against funds deposited in a bank or savings and loan association; (3) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (4) repurchase agreements,[12] which involve purchases of debt securities; (5) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and (6) commercial paper, which is short-term unsecured promissory notes.[13]

The Fund may invest in the securities of other ETFs and non-exchange listed open-end investment companies (referred to as "mutual funds"), including money market funds,[14] that, in each case, will be investment companies registered under the 1940 Act.

C. Exchange's Description of the Fund's Investment Restrictions

According to the Exchange, the Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser or a Sub-Adviser.[15] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries (other than securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies), except that the Fund may invest 25% or more of the value of its total assets in securities of issuers in a group of industries to approximately the same extent that the Buy List includes the securities of a particular group of industries.[16]

All of the Fund's net assets that are invested in exchange-traded equity securities (including common stocks and ETFs) will be invested in securities that are listed on a U.S. exchange.[17] In addition, the Fund will not invest in derivative instruments, and the Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

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[10] The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser or a Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

[11] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. ("S&P Ratings"), Moody's Investors Service, Inc. ("Moody's") or Fitch Ratings ("Fitch") and have a maturity of one year or less.

[12] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust. The Adviser will review and monitor the creditworthiness of such institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[13] The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F1 or higher by Fitch.

[14] It is expected that any such mutual fund or ETF will invest primarily in short-term fixed income securities. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. In addition, the Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order that the Trust has obtained from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.,* 2X or -3X) ETFs.

[15] In reaching liquidity decisions, the Adviser and a Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[16] The Exchange further represents that the Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

[17] The Fund will not invest in OTC secondary market securities.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with section 6(b)(5) of the Exchange Act,[19] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with section 11A(a)(1)(C)(iii) of the Exchange Act,[20] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. According to the Exchange, quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. On each business day, before commencement of trading in Shares in the Regular Market Session [21] on the Exchange, the Fund will disclose on its Web site the "Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[22] In addition, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, will be disseminated. The Intraday Indicative Value, which will be made available on the NASDAQ OMX Information LLC proprietary index data service,[23] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Fund's NAV will be determined as of the close of regular trading on the New York Stock Exchange ("NYSE") on each day the NYSE is open for trading. If the NYSE closes early on a valuation day, the NAV will be determined as of that time.[24]

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for U.S. exchange-traded equity securities (including common stocks and ETFs) will be available from the exchanges on which they are traded as well as in accordance with any applicable CTA plans. Open-end investment companies (other than ETFs) are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors. Pricing information for Short-Term Debt Instruments, repurchase agreements, certificates of deposit, and bank time deposits will be available from major broker-dealer firms, major market data vendors, and pricing services. Moreover, the Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund, as well as the Shares' ticker, CUSIP, and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[25] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

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[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8:00 p.m., Eastern Time).

[22] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

[23] According to the Exchange, the NASDAQ OMX Global Index Data Service ("GIDS") currently is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade NASDAQ OMX indexes, listed ETFs, or third-party partner indexes and ETFs.

[24] According to the Exchange, equity securities (including other ETFs) listed on a securities exchange, market or automated quotation system for which quotations are readily available (except for securities traded on NASDAQ) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., Eastern Time if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on NASDAQ, the official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing. Open-end investment companies other than ETFs will be valued at NAV. Except as provided below, short-term U.S. government securities, commercial paper, and bankers' acceptances, all as set forth under "Other Investments" (collectively, "Short-Term Debt Instruments") will typically be valued using information provided by a pricing service. Pricing services typically value non-exchange-traded instruments utilizing a range of market-based inputs and assumptions, including readily available market quotations obtained from broker-dealers making markets in such instruments, cash flows, and transactions for comparable instruments. In pricing certain instruments, the pricing services may consider information about an instrument's issuer or market activity provided by the Adviser. Short-Term Debt Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts, provided the pricing committee of the Adviser has determined that the use of amortized cost is an appropriate reflection of value given market and issuer-specific conditions existing at the time of the determination. Certificates of deposit and bank time deposits will typically be valued at cost. Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value; term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

[25] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[26] Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority[27] that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[28] In addition, Nasdaq Rule 5735(g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. The Exchange states that Penserra is affiliated with a broker-dealer, and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the portfolio.[29]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including the following:

(1) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[30]

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund (including common stocks and ETFs) with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"),[31] and FINRA may obtain trading information regarding trading in the Shares and such exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) All of the Fund's net assets that are invested in exchange-traded equity securities (including common stocks and ETFs) will be invested in securities that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. In addition, the Fund will not invest in OTC secondary market securities.

(5) The Fund will not invest in derivative instruments, and the Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(6) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(7) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how and by whom the information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(8) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.[32]

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser or a Sub-Adviser.[33]

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[26] These may include: (1) The extent to which trading is not occurring in the securities and other assets constituting the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[27] Nasdaq Rule 5730(c)(4) defines "Reporting Authority."

[28] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

[29] *See supra* note 8 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser, each Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[30] The Exchange represents that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[31] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[32] *See* 17 CFR 240.10A–3.

[33] *See supra* note 15 and accompanying text.

(10) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

(11) The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust. The Adviser will review and monitor the creditworthiness of such institutions and will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

(12) The Fund may only invest in commercial paper rated A–1 or higher by S&P Ratings, Prime-1 or higher by Moody's, or F1 or higher by Fitch.

(13) While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (*e.g.*, 2X or -3X) ETFs.

The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in Nasdaq Rule 5735 for the Shares to be listed and traded on the Exchange. In addition, the Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[34] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, as modified by Amendment No. 1 to the proposed rule change.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with section 6(b)(5) of the Act,[35] Section 11A(a)(1)(C)(iii) of the Act,[36] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Exchange Act,[37] that the proposed rule change (SR–NASDAQ–2016–072), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Robert W. Errett,

Deputy Secretary.

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[34] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR–BATS–2015–100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78635; File No. SR–BatsEDGX–2016–45]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 13.8, EDGX Book Feeds, To Adopt a New Market Data Product Known as EDGX Summary Depth

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.8 to adopt a new market data product known as EDGX Summary Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 13.8 to adopt a new market data product known as EDGX Summary Depth. EDGX Summary Depth would be a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System[5] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. EDGX Summary Depth also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange will disseminate the aggregate Best Bid and Offer ("BBO") and last sale information through EDGX

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] "System" is defined as the "the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

Summary Depth no earlier than it provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The Market Status message will reflect a change in the status of the Exchange. For example, the Market Status message would indicate whether the Exchange is experiencing a systems issue or disruption resulting in quotation or trade information not currently being disseminated as part of the aggregated BBO. The Market Status message will also indicate when Exchange has resolved a systems issue or disruption and is properly reflecting the status of the aggregated BBO. The Trade Break message will indicate when an execution is broken in accordance with Exchange rules.[6] The Trading Status message will indicate the current trading status of a security on the Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (“Short Sale Circuit Breaker”),[7] or when the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

The Exchange intends to offer EDGX Summary Depth as of January 3, 2017. Prior to January 3, 2017, the Exchange will file a separate rule change with the Commission proposing fees to be charged for EDGX Summary Depth.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of EDGX Summary Depth. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in EDGX Summary Depth.

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[11] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. EDGX Summary Depth would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, EDGX Summary Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the New York Stock Exchange, Inc. (“NYSE”) and the Nasdaq Stock Market LLC (“Nasdaq”).[14] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[16] The

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[6] *See, e.g.*, Exchange Rule 11.15, Clearly Erroneous Executions.

[7] 17 CFR 242.200(g); 17 CFR 242.201.

[8] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are Bats EDGA Exchange, Inc., (“EDGA”), Bats EDGX Exchange, Inc. (“EDGX”), and Bats BZX Exchange, Inc. (“BZX”) (“collectively, the “Bats Exchanges”).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) (“Regulation NMS Adopting Release”).

[14] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView as a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 5, 2016) (providing real-time view of the NYSE limit order book including the aggregated size at each price level). *See* Securities Exchange Act Release Nos. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR–NASD–2002–33) (order approving fees for Nasdaq TotalView); *and* 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (order approving fees for NYSE OpenBook).

[15] *See* Regulation NMS Adopting Release, *supra* note 13.

[16] The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the “Bats One Summary Feed”). In addition, the Bats One Feed contains optional functionality which

Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by the NYSE and Nasdaq.[17] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGX–2016–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2016–45, and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

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enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). *See* Exchange Rule 13.8(b). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed EDGX Summary Depth Feed, as well as the summarized depth feeds to be proposed by BYX, BZX, and EDGA to create a competing product to the Bats One Feed. *Supra* note 8. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. *See* Bats One Approval Order. While the proposed EDGX Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[17] *See supra* note 14.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78622; File No. SR–MSRB–2016–11]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Due Date for Certain Submissions Under Rule G–45 and Provide Guidance on the Application of Rules G–42 and G–44 to Municipal Advisors to Sponsors or Trustees of Municipal Fund Securities

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2016 the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB filed with the Commission a proposed rule change to delay by two years, until August 29, 2018, the date on which submissions must be made pursuant to Rule G–45, on reporting of information on municipal fund securities, by underwriters of programs established to implement the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the "ABLE Act" and an "ABLE program").[3] The submissions on Form G–45 from such underwriters currently are due August 29, 2016. However, the current due dates under Rule G–45 for submissions from underwriters of other types of municipal fund securities, namely tax-advantaged college savings plans established under section 529 of the Internal Revenue Code of 1986, as amended (the "Code") (a "529 college savings plan"),[4] would remain unchanged.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

In addition, the proposed rule change would provide guidance under (i) Rule G–42, on duties of non-solicitor municipal advisors, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, on supervisory and compliance obligations of municipal advisors, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities (the amendment to Rule G–45 and guidance under Rules G–42 and G–44, collectively the "proposed rule change"). The MSRB proposes an immediate effectiveness for the proposed rule change.

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The MSRB proposes to delay by two years, until August 29, 2018, the date the submissions are due under Rule G–45 on Form G–45 from underwriters to ABLE programs. In addition, the MSRB proposes to provide guidance under (i) Rule G–42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

The ABLE Act added section 529A to the Code to permit a state, or an agency or instrumentality thereof, to establish and maintain a new type of tax-advantaged savings program to help support individuals with disabilities in maintaining health, independence, and quality of life. Section 529A was modeled on section 529 of the Code.[5] Section 529 of the Code, in part, established 529 college savings plans to encourage saving for future higher education costs.[6] The SEC has determined that interests offered by such 529 college savings plans are municipal securities under section 3(a)(29) of the Act.[7]

Given the similarities between the structure of ABLE accounts and 529 college savings plan accounts and the manner in which interests in those accounts will be distributed, the MSRB requested interpretive guidance from the SEC staff. Specifically, the MSRB requested guidance on:

(i) Whether interests in an ABLE account offered through an ABLE program are "municipal securities," as defined in Section 3(a)(29) of the Exchange Act, and

(ii) whether a dealer participating in the sale of those interests would be participating in a "primary offering" and thus be subject to the requirements of Rule 15c2–12 under the Exchange Act.

In response to the first request, the SEC staff stated that:[8]

> at least some interests in ABLE accounts . . . may be "municipal securities" as defined in Section 3(a)(29) of the Exchange Act, depending on the facts and circumstances, including without limitation, the extent to which an ABLE account through an ABLE Program is a direct obligation of, or obligation guaranteed as to principal or interest by, a State or any agency or instrumentality thereof.

With respect to the second request, the SEC staff stated:[9]

> [W]e note that Rule 15c2–12(f)(7) under the Exchange Act defines a "primary offering" as including an offering of municipal securities directly or indirectly by or on behalf of an issuer of such securities. Based upon your letter and communications with MSRB staff, it is our understanding that interests in ABLE Programs generally are offered only by direct purchase from the issuer. Accordingly, we would view those interests as having been sold in a "primary offering" as that term is defined in Rule 15c2–12. If a dealer is acting as an "underwriter" (as defined in Rule 15c2–12(f)(8)) in connection with that primary offering, the dealer may be subject to the requirements of Rule 15c2–12.

In April 2016, after the Board had received the SEC staff guidance, the Board provided interpretative guidance under MSRB Rule D–12, on the definition of "municipal fund security."[10]

The April guidance provided that interests in ABLE accounts may be municipal fund securities, and that to the extent that dealers effect transactions in municipal fund securities, such dealers may be subject to all Board rules, unless those dealers are specifically exempted from any of those rules. The April guidance also anticipated that the Board would publish guidance to address particular issues, including Rule G–45, applicable to the sale of interests in ABLE programs by dealers.[11] The proposed rule change is the first of such guidance to address particular issues related to the sale of interests in ABLE programs by dealers and related to municipal advisory activities provided by municipal advisors to sponsors or trustees of ABLE programs.

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[3] The ABLE Act was enacted on December 19, 2014 as part of The Tax Increase Prevention Act of 2014 (Pub. L. 113–295).

[4] 26 U.S.C. 529(b)(1)(A)(ii).

[5] Report to accompany H.R. 647, Committee on Ways and Means, H.R. Rept. No. 113–614, part 1 at 7 (2014).

[6] Section 529 also established prepaid tuition plans. 26 U.S.C. 529(b)(1)(A)(i). Under a prepaid tuition plan, an investor may purchase tuition credits or certificates on behalf of a designated beneficiary, which entitle the beneficiary to the waiver or payment of qualified higher education expenses. Prepaid tuition plans generally have residency requirements. Such credits or certificates generally are not viewed as being municipal securities, and dealers generally do not participate in the marketing of prepaid tuition plans.

[7] Exchange Act Release No. 70462 (Sept. 20, 2013), 78 FR 67468, 67472–73 (Nov. 12, 2013). *See* Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to Diane G. Klinke, General Counsel, MSRB (Feb. 26, 1999) (determining that at least some interests in higher education trusts are municipal securities under the Act).

[8] Letter dated March 31, 2016 from Jessica S. Kane, Director, Office of Municipal Securities, SEC, to Robert A. Fippinger, Esq., Chief Legal Officer, MSRB, in response to letter dated December 31, 2015 from Robert A. Fippinger to Jessica S. Kane available at *https://www.sec.gov/info/municipal/msrb-letter-033116-interests-in-able-accounts.pdf* [footnote omitted].

[9] *Id.*

[10] MSRB Regulatory Notice 2016–14 (Apr. 12, 2016) (the "April guidance").

[11] *Id.*

Specifically, as ABLE programs become operational, the proposed rule change would delay, by two years from August 29, 2016 until August 29, 2018, the date that submissions are due under Rule G–45 from underwriters to ABLE programs. The MSRB believes that the delay would help ensure that the MSRB receives reliable, complete and accurate filings on Form G–45 from such underwriters. The MSRB also believes that the delay would help ensure that the MSRB receives more meaningful data about a larger set of ABLE programs on Form G–45. However, the current deadlines under Rule G–45 for submissions from underwriters of 529 college savings plans would remain unchanged.

Further, the proposed rule change would provide guidance in supplementary material under (i) Rule G–42, that such rule applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44, that such rule equally applies to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities. The MSRB is proposing this guidance in response to requests from industry groups in other Board rulemaking proposals.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(C) of the Act,[12] which provides that the MSRB's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

As ABLE programs become operational, the proposed rule change would provide underwriters to ABLE programs with additional time to submit reliable, accurate and complete data to the MSRB under Rule G–45. The proposed rule change also would provide the MSRB with more meaningful data about a larger set of ABLE programs under Rule G–45. Further, the proposed rule change would provide guidance about the applicability of (i) Rule G–42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities. The proposed guidance would provide clarity about the applicability of such rules to municipal advisors that engage in municipal advisory activities for sponsors or trustees of municipal fund securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Act[13] requires that MSRB rules be designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the Act. The proposed rule change would extend the date that submissions on Form G–45 are due from underwriters to ABLE programs by two years from August 29, 2016 until August 29, 2018. The proposed rule change also would provide guidance about the applicability of (i) Rule G–42 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of ABLE programs and (ii) Rule G–44 to municipal advisors that engage in municipal advisory activities for sponsors or trustees of 529 college savings plans, ABLE programs, and other municipal fund securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to section 19(b)(3)(A)[14] of the Act and Rule 19b–4(f)(6)[15] thereunder, the MSRB has designated the proposed rule change as one that affects a change that does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative until 30 days after the date of filing.[16] However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if consistent with the protection of investors and the public interest.[17]

The MSRB has requested that the Commission waive the 30-day operative delay specified in Rule 19b–4(f)(6)(iii).[18] The deadline for underwriters to ABLE programs to submit data under Rule G–45 for the period ending June 30, 2016 is August 29, 2016. According to the MSRB, the waiver of the 30-day operative delay will provide certainty with respect to the due date for underwriters to make submissions on Form G–45 in connection with ABLE programs. In order to delay such submissions, the MSRB states that it is important that the proposed rule change become effective immediately. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will provide certainty as to the due date for submissions on Form G–45 and avoid confusion in the market. Accordingly, the Commission hereby waives the 30-day operative delay specified in Rule 19b–4(f)(6)(iii) and designates the proposed rule change to be operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the

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[12] 15 U.S.C. 78*o*–4(b)(2)(C).

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] *Id.*

[17] In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change, along with a brief description and text of such proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The MSRB fulfilled this obligation.

[18] *See* SR–MSRB–2016–11 (filed with the Commission on August 12, 2016).

[19] For the purpose of waiving the 30-day operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MSRB–2016–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2016–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2016–11 and should be submitted on or before September16, 2016.

For the Commission, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20452 Filed 8–25–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78629; File No. SR–NYSEMKT–2016–63]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Change Amending the Co-Location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

August 22, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 16, 2016, NYSE MKT LLC (the "Exchange" or "NYSE MKT") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the co-location services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (2) to establish fees relating to User's access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services. In addition, this proposed rule change reflects changes to the NYSE MKT Equities Price List ("Price List") and the NYSE Amex Options Fee Schedule ("Fee Schedule") related to these co-location services. The proposed change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location[4] services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users[5] with local area networks available in the data center; and (2) to establish fees relating to Users' access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services.

More specifically, the Exchange proposes to revise the Price List and Fee Schedule to include:

a. a more detailed description of the access to the trading and execution systems of the Exchange and its Affiliate SROs (the "Exchange Systems") and connectivity to certain market data products (the "Included Data Products") that Users receive with connections to the Liquidity Center Network ("LCN") and internet protocol ("IP") network, local area networks available in the data center;

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC ("NYSE LLC") and NYSE Arca, Inc. ("NYSE Arca" and, together with NYSE LLC, the "Affiliate SROs"). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

b. fees for connectivity to:

- Certain other market data products of the Exchange and its Affiliate SROs (the "Premium NYSE Data Products" and, together with the Included Data Products, the "NYSE Data Products");
- Access to the execution systems of third party markets and other content service providers ("Third Party Systems");
- Data feeds from third party markets and other content service providers (the "Third Party Data Feeds");
- Third party testing and certification feeds;
- Depository Trust & Clearing Corporation ("DTCC") services; and

c. fees for virtual control circuits ("VCCs") between two Users. VCCs are unicast connections between two participants over dedicated bandwidth.[6]

The Exchange provides access to the Exchange Systems and Third Party Systems (together, "Access") and connectivity to NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC (collectively, "Connectivity") as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, or a combination thereof.

Similarly, the Exchange provides VCCs as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a fiber connection ("cross connect").[7]

Access to Exchange Systems and Connectivity to Included Data Products

As the Exchange has previously stated, a User's connection to the LCN or IP network provides it access to the Exchange Systems and Exchange market data products.[8] More specifically, when a User purchases access to the LCN or IP network through purchase of a 1, 10, or 40 Gb LCN circuit, a 10 Gb LX Circuit, bundled network access, Partial Cabinet Solution bundle, or 1, 10 or 40 Gb IP network access,[9] as part of the purchase it receives access to the Exchange Systems and connectivity to any Included Data Products that it selects.[10] The Exchange proposes to revise the Price List and Fee Schedule to provide a more detailed description of the access to the Exchange Systems and connectivity to Included Data Products that comes with connections to the LCN or IP network.[11]

Access to certification and testing feeds comes with the purchase of access to the Exchange Systems and connectivity to many of the NYSE Data Products. Such feeds, which are solely used for certification and testing and do not carry live production data, are only available over the IP network.[12] Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development.

The Exchange offers connectivity to NYSE Data Products in three forms: As a resilient feed, as "Feed A" or as "Feed B." Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.[13]

Connectivity to Exchange Systems

As the Exchange has previously stated, Users' connections to the LCN or IP networks include access to Exchange Systems.[14] Accordingly, the Exchange proposes to add language to the Price List and Fee Schedule stating the following:

When a User purchases access to the LCN or IP network, it receives the ability to connect to the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca (Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such connectivity includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the connections it receives at any time, subject to authorization. A User does not have to purchase access to the LCN or IP network in order to obtain connectivity to Exchange Systems.

Connectivity to Included Data Products

Currently, there are three categories of data feeds for which the Exchange offers

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[6] Information flows over existing network connections in two formats: "unicast" format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[7] *See* Original Co-location Filing, *supra* note 4, at 59299 and Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and non-User's equipment as co-location services) (the "IP Network Release").

[8] *See* Original Co-location Filing, *supra* note 4, at 59299 ("According to Amex, SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.") and IP Network Release, *supra* note 7, at 7894 ("Like the LCN, the IP network provides Users with access to the Exchange's trading and execution systems and to the Exchanges' proprietary market data products."). The IP network was previously sometimes referred to as SFTI. *See id.*

[9] *See* Securities Exchange Act Release Nos. 70886 (November 15, 2013), 78 FR 69904 (November 21, 2013) (SR–NYSEMKT–2013–92); 72719 (July 30, 2014), 79 FR 45502 (August 5, 2014) (SR–NYSEMKT–2014–61); 76373 (November 5, 2015), 80 FR 70024 (November 12, 2015) (SR–NYSEMKT–2015–90); and 77071 (February 5, 2016), 81 FR 7382 (February 11, 2016) (SR–NYSEMKT–2015–89).

[10] As discussed below, in order to connect to an Included Data Product, a User must have entered into a contract with the provider of the data feed. Similarly, in order to access an Exchange System, the User must have authorization from the Exchange or the relevant Affiliate SRO.

[11] Because each Included Data Product uses part of a User's bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires. The Exchange notes that connectivity to the LCN and IP network also includes connectivity to Exchange Systems, as discussed under "Connectivity to Exchange Systems," below. *See also* note 8, *supra*.

[12] A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See* IP Network Release, *supra* note 7, at 7894. A User that opted to obtain connectivity to NYSE Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

[13] A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

[14] *See* note 8, *supra*.

Users connectivity: Included Data Products; Premium NYSE Data Products; and Third Party Data.[15]

The Included Data Products include the data feeds disseminated by the Consolidated Tape Association ("CTA") (such data feeds, the "NMS feeds"). CTA is responsible for disseminating consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[16] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User's LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.[17] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included Data Products require a network connection with a minimum gigabyte ("Gb") size in order to accommodate the feed.

Users may connect to an Included Data Product as a resilient feed or as individual Feeds A and B.

The Included Data Products are as follows:

NMS feeds
NYSE:
  NYSE Alerts
  NYSE BBO
  NYSE OpenBook
  NYSE Order Imbalances
  NYSE Trades
NYSE Amex Options
NYSE Arca:
  NYSE ArcaBook
  NYSE Arca BBO
  NYSE Arca Order Imbalances
  NYSE Arca Trades
NYSE Arca Options
NYSE Bonds
NYSE MKT:
  NYSE MKT Alerts
  NYSE MKT BBO
  NYSE MKT OpenBook
  NYSE MKT Order Imbalances
  NYSE MKT Trades

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Price List and Fee Schedule:

> When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

Connectivity

Connectivity to Premium NYSE Data Products

The Exchange offers Users connectivity to Premium NYSE Data Products from the Exchange and its Affiliate SROs over Users' LCN and IP network connections. The Exchange proposes to revise the Price List and Fee Schedule to specify the connectivity fees for Premium NYSE Data Products.

The Premium NYSE Data Products are equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products.[18] For example, the NYSE Integrated Feed includes, among other things, information available from three of the equity Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances.[19] The NYSE BQT data feed includes, among other things, certain data elements from six of the equity Included Data Products: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.[20]

By contrast, while some of the Included Data Products include data elements from other Included Data Products, no single Included Data Product includes as much data as a Premium NYSE Data Product for the same market. With the exception of NYSE Arca Order Imbalances, the equity Included Data Products were introduced before the Premium Data Products.[21]

There are no Premium NYSE Data Products for the NYSE Amex Options or NYSE Arca Options markets, as there are no options data products that integrate, or include data elements from, other option data products in the same manner that the NYSE, NYSE MKT and NYSE Arca Integrated Feeds integrate, or include data elements from, equity Included Data Products.

In order to connect to a Premium NYSE Data Product, a User enters into a contract with the provider of such data, pursuant to which it is charged for the Premium NYSE Data Product. After the data provider and User enter into the contract and the Exchange receives authorization from the data provider, the Exchange provides the User with connectivity to the Premium NYSE Data Product over the User's LCN or IP network port. The Exchange charges the User for the connectivity to the Premium NYSE Data Product. A User only receives, and is only charged for, connectivity to the Premium NYSE Data Product feeds that it selects.

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[15] The NYSE Data Products and Third Party Data Feeds do not provide access or order entry to the Exchange's execution system.

[16] The Included Data Products do not include connectivity to the data feeds disseminated pursuant to the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis" (the "UTP Plan"). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C). Connectivity to data disseminated pursuant to the UTP Plan is available as a Third Party Data Feed.

[17] As noted above, certification and testing feeds included with an Included Data Product are only available over the IP network.

[18] The rule changes establishing the NYSE Integrated Feed and NYSE MKT Integrated Feed were immediately effective in 2015, and the rule change establishing the NYSE Arca Integrated Data Feed was immediately effective in 2011. The NYSE Best Quote & Trades ("NYSE BQT") data feed was approved in 2014. *See* Securities Exchange Act Release Nos. 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); and 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed).

[19] *See* SR–NYSE–2015–03, *supra* note 18, at 4952.

[20] *See* SR–NYSE–2014–40, *supra* note 18, at 67491.

[21] *See* Securities Exchange Act Release Nos. 60123 (June 17, 2009), 74 FR 30192 (June 24, 2009) (SR–NYSEAmex–2009–28) (establishing availability of NYSE Amex OpenBook data product); 61936 (April 16, 2010), 75 FR 21088 (April 22, 2010) (SR–NYSEAmex–2010–35) (establishing NYSE Amex Trades and NYSE Amex BBO); and 60385 (July 24, 2009), 74 FR 38249 (July 31, 2009) (NYSEAmex–2009–26) (establishing fee for NYSE Amex Order Imbalance). *See also* Securities Exchange Act Release No. 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances). NYSE Arca Order Imbalances, NYSE Order Imbalances and NYSE MKT Order Imbalances are all Included Data Products.

The Premium NYSE Data Products are available over both the LCN and IP network.[22] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Premium NYSE Data Products between its LCN and IP network connections. Some Premium NYSE Data Products require a network connection with a minimum Gb size in order to accommodate the feed.[23]

A User can opt to connect to a Premium NYSE Data Product as a resilient feed or as Feed A or Feed B. Connectivity to the two identical Feeds A and B is only available on the IP network.

The Exchange charges a monthly recurring fee for connectivity to Premium NYSE Data Products. The following table shows the Premium NYSE Data Products and corresponding monthly recurring connectivity fees.

Premium NYSE data product	Feed	Monthly recurring connectivity fee per feed
NYSE Arca Integrated Feed	Feed A, IP network only	$1,500
	Feed B, IP network only	1,500
	Resilient, IP network only	3,000
	Resilient, LCN only	1,500
NYSE Best Quote and Trades (BQT)	Feed A, IP network only	500
	Feed B, IP network only	500
	Resilient, IP network only	1,000
	Resilient, LCN only	500
NYSE Integrated Feed	Feed A, IP network only	1,500
	Feed B, IP network only	1,500
	Resilient, IP network only	3,000
	Resilient, LCN only	1,500
NYSE MKT Integrated Feed	Feed A, IP network only	300
	Feed B, IP network only	300
	Resilient, IP network only	600
	Resilient, LCN only	300

In addition to the connectivity fees, the Exchange proposes to add the following language to the Price List and Fee Schedule:

> Pricing for Premium NYSE Data Products is for connectivity only. Connectivity to Premium NYSE Data Products is subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Premium NYSE Data Products are charged by the provider of the data feed. The Exchange is not the exclusive method to connect to Premium NYSE Data Products.

Connectivity to Third Party Systems

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to Third Party Systems of multiple third party markets and other content service providers for a fee. Users connect to Third Party Systems over the IP network.[24] The Exchange selects what connectivity to Third Party Systems to offer in the data center based on User demand.

In order to obtain access to a Third Party System, a User enters into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider charges the User for access to the Third Party System. The Exchange then establishes a unicast connection between the User and the relevant third party content service provider over the IP network. The Exchange charges the User for the connectivity to the Third Party System. A User only receives, and is only charged for, access to Third Party Systems for which it enters into agreements with the third party content service provider.

With the exception of the ICE feed,[25] the Exchange has no ownership interest in the Third Party Systems. Establishing a User's access to a Third Party System does not give the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System is not through the Exchange's execution system.[26]

The Exchange charges a monthly recurring fee for connectivity to a Third Party System. Specifically, when a User requests access to a Third Party System, it identifies the applicable third party market or other content service provider and what bandwidth connection it requires.

The monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System varies by the bandwidth of the connection, as follows:

Bandwidth of connection to Third Party System	Monthly recurring fee per connection to Third Party System
1Mb	$200
3Mb	400
5Mb	500
10Mb	800
25Mb	1,200
50Mb	1,800
100Mb	2,500
200 Mb	3,000
1 Gb	3,500

The Exchange provides connectivity to the following Third Party Systems:

Americas Trading Group (ATG)
BATS
Boston Options Exchange (BOX)
Chicago Board Options Exchange (CBOE)
Credit Suisse
International Securities Exchange (ISE)
Nasdaq
National Stock Exchange
NYFIX Marketplace

In addition to the connectivity fees, the Exchange proposes to add language to the Price List and Fee Schedule stating the following:

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[22] As noted above, certification and testing feeds included with a Premium NYSE Data Product are only available over the IP network.

[23] *See* note 13, *supra.*

[24] *See* IP Network Release, *supra* note 7, at 7894.

[25] ICE is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc., and so the Exchange has an indirect interest in the ICE feeds. The ICE feeds include both market data and trading and clearing services, but the Exchange includes it as a Third Party Data Feed. In order for a User to receive an ICE feed, ICE must provide authorization for the User to receive both data and trading and clearing services.

[26] The Exchange has a dedicated network connection to each of the Third Party Systems.

> Pricing for access to the execution systems of third party markets and other service providers (Third Party Systems) is for connectivity only. Connectivity to Third Party Systems is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Systems is over the IP network. Any applicable fees are charged independently by the relevant third party content service provider. The Exchange is not the exclusive method to connect to Third Party Systems.

Connectivity to Third Party Data Feeds

The Exchange proposes to revise the Price List and Fee Schedule to provide that Users may obtain connectivity to Third Party Data Feeds for a fee. The Exchange receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at its data center. It then provides connectivity to that data to Users for a fee. With the exceptions of Global OTC and NYSE Global Index, Users connect to Third Party Data Feeds over the IP network.[27]

The Exchange notes that charging Users a monthly fee for connectivity to Third Party Data Feeds is consistent with the monthly fee Nasdaq charges its co-location customers for connectivity to third party data. For instance, Nasdaq charges its co-location customers monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX.[28]

In order to connect to a Third Party Data Feed, a User enters into a contract with the relevant third party market or other content service provider, pursuant to which the content service provider charges the User for the Third Party Data Feed. The Exchange receives the Third Party Data Feed over its fiber optic network and, after the data provider and User enter into the contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User over the User's port. The Exchange charges the User for the connectivity to the Third Party Data Feed. A User only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it enters into contracts.

With the exception of the Intercontinental Exchange ("ICE"), Global OTC and NYSE Global Index feeds,[29] the Exchange has no affiliation with the sellers of the Third Party Data Feeds. It has no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feeds, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed.[30] The Exchange receives Third Party Data Feeds via arms-length agreements and it has no inherent advantage over any other distributor of such data.

The Exchange charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring feed for SuperFeed and MSCI varies by the bandwidth of the connection. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in a Third Party Data Feed.

The following table shows the feeds that connectivity to each Third Party Data Feed provides, together with the applicable monthly recurring fee.

Third Party Data Feed	Monthly recurring connectivity fee per Third Party Data Feed
Bats BZX Exchange (BZX) and Bats BYX Exchange (BYX)	$2,000
Bats EDGX Exchange (EDGX) and Bats EDGA Exchange (EDGA)	2,000
Chicago Board Options Exchange (CBOE)	2,000
Chicago Stock Exchange (CHX)	400
Euronext	600
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
Intercontinental Exchange (ICE)	1,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ OMDF	100
NASDAQ UQDF & UTDF	500
NYSE Global Index	100
OTC Markets Group	1,000
SR Labs—SuperFeed ≤500 Mb	250
SR Labs—SuperFeed >500 Mb to ≤1.25 Gb	800
SR Labs—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

In addition to the above connectivity fees, the Exchange proposes to add the following language to the Price List and Fee Schedule:

> Pricing for data feeds from third party markets and other content service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IP network, with the exception that Users can connect to Global OTC and NYSE Global Index over the IP network or LCN. Market data fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees.[31] When the Exchange receives a redistribution fee, it passes through the charge to the User, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the User's invoice. The Exchange proposes to add language to the Price List and Fee Schedule accordingly.

The Exchange provides third party markets or content providers that are also Users connectivity to their own Third Party Data Feeds. The Exchange does not charge Users that are third party markets or content providers for connectivity to their own feeds, as in the Exchange's experience such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange proposes to add language to the Price List and Fee Schedule accordingly.

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[27] *See* IP Network Release, *supra* note 7, at 7894 ("The IP network also provides Users with access to away market data products."). Users can connect to Global OTC and NYSE Global Index over the IP network or LCN.

[28] *See* Nasdaq Stock Market Rule 7034.

[29] ICE and the Global OTC alternative trading system are both owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc., and so the Exchange has an indirect interest in the ICE and Global OTC feeds. The NYSE Global Index feed includes index and exchange traded product valuations data, with data drawn from the Exchange, the Affiliate SROs, and third party exchanges. Because it includes third party data, the NYSE Global Index feed is considered a Third Party Data Feed. As with all Third Party Data Feeds, the Exchange is not the exclusive method to connect to the ICE, Global OTC or NYSE Global Index feeds.

[30] Unlike other Third Party Data Feeds, the ICE feeds include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services.

[31] *See* NASDAQ Stock Market LLC Rule 7025, "Extranet Access Fee", and OTC Markets Market Data Distribution Agreement Appendix B, "Fees" at *http://www.otcmarkets.com/content/doc/market-data-fees-2016.pdf. See also* Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR–NASDAQ–2015–003).

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds provide Users an environment in which to conduct tests with non-live data.[32] Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange proposes to revise the Price List and Fee Schedule to include connectivity to third party certification and testing feeds. The Exchange charges a connectivity fee of $100 per month per feed.

The Exchange proposes to add the following connectivity fees and language to the Price List and Fee Schedule:

Connectivity to third party certification and testing feeds.	$100 monthly recurring fee per feed.

The Exchange provides connectivity to third party testing and certification feeds provided by third party markets and other content service providers. Pricing for third party testing and certification feeds is for connectivity only. Connectivity to third party testing and certification feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to third party testing and certification feeds is over the IP network. Any applicable fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to third party testing and certification feeds.

Connectivity to DTCC

The Exchange provides Users connectivity to DTCC for clearing, fund transfer, insurance, and settlement services.[33] The Exchange proposes to revise the Price List and Fee Schedule to include connectivity to DTCC. The Exchange charges a connectivity fee of $500 per month for connections to DTCC of 5 Mb and $2,500 for connections of 50 Mb. Connectivity to DTCC is available over the IP network.

In order to connect to DTCC, a User enters into a contract with DTCC, pursuant to which DTCC charges the User for the services provided. The Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port. The Exchange charges the User for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and a User's connection to DTCC is not through the Exchange's execution system.

The Exchange proposes to add the following connectivity fees and language to the Price List and Fee Schedule:

5 Mb connection to DTCC.	$500 monthly recurring fee.
50 Mb connection to DTCC.	$2,500 monthly recurring fee.

Pricing for connectivity to DTCC feeds is for connectivity only. Connectivity to DTCC feeds is subject to any technical provisioning requirements and authorization from DTCC. Connectivity to DTCC feeds is over the IP network. Any applicable fees are charged independently by DTCC. The Exchange is not the exclusive method to connect to DTCC feeds.

Virtual Control Circuits

Finally, the Exchange proposes to revise the Price List and Fee Schedule to offer VCCs between two Users. VCCs are connections between two points over dedicated bandwidth using the IP network. A VCC (previously called a "peer to peer" connection) is a two-way connection which the two participants can use for any purpose.

The Exchange bills the User requesting the VCC, but will not set up a VCC until the other User confirms that it wishes to have the VCC set up.

The Exchange proposes to revise the Price List and Fee Schedule to include VCCs between two Users. The fee for VCCs is based on the bandwidth utilized, as follows:

Type of service	Description	Amount of charge
Virtual Control Circuit between two Users	1Mb	$200 monthly charge.
	3Mb	$400 monthly charge.
	5Mb	$500 monthly charge.
	10Mb	$800 monthly charge.
	25Mb	$1,200 monthly charge.
	50Mb	$1,800 monthly charge.
	100Mb	$2,500 monthly charge.

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[32] For example, a User that trades on a third party exchange may wish to test the exchange's upcoming releases and product releases or may wish to test a new algorithm in a testing environment prior to making it live.

[33] Such connectivity to DTCC is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.*, a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [34] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliate SROs.[35]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[37] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Co-location was created to permit Users "to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems." [38] The Exchange believes that providing Users access to the Exchange Systems and connectivity to Included Data Products to Users with their purchase of access to the LCN or IP network, as well as revising the Price List and Fee Schedule to provide a more detailed description of such access and connectivity, would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because such access and connectivity is directly related to the purpose of co-location. In addition, the proposed changes would make the descriptions of access to the LCN and IP network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network.

The Exchange believes that providing access to Third Party Systems and connectivity to Premium NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds and DTCC, as well as revising the Price List and Fee Schedule to describe such services, would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the descriptions of market participants' access and connectivity options and the related fees more accessible and transparent, thereby providing market participants with clarity as to what options for connectivity are available to them and what the related costs are.

In addition, the Exchange believes that providing connectivity to third party testing and certification feeds removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because such feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development, and allow Users to certify conformance to any applicable technical requirements.

Similarly, the Exchange believes that providing connectivity to DTCC removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it provides efficient connection to clearing, fund transfer, insurance, and settlement services.

The Exchange believes that providing Users with VCCs removes impediments to, and perfects the mechanisms of, a free and open market and a national market system because VCCs provide each User with an additional option for connectivity to another User, helping it tailor its data center operations to the requirements of its business operations by allowing it to select the form of connectivity that best suits its needs. The Exchange provides VCCs as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[39] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

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[34] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[35] *See* SR–NYSEMKT–2013–67, *supra* note 5, at 50471. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–45 and SR–NYSEArca–2016–89.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] Original Co-Location Filing, *supra* note 4, at 59299.

[39] 15 U.S.C. 78f(b)(4).

The Exchange believes that the proposed fees changes are consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the services and fees proposed herein are equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select to access the Exchange Systems or connect to Included Data Products would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. All Users that voluntarily select to receive access to Third Party Systems, connectivity to Premium NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds and DTCC, or a VCC between Users would be charged the same amount for the same services.

The Exchange believes that the services and fees proposed herein are reasonable, equitably allocated and not unfairly discriminatory because the Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. Similarly, the Exchange provides VCCs between Users as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

Overall, the Exchange believes that the proposed charges are reasonable, equitably allocated and not unfairly discriminatory because the Exchange offers Access, Connectivity, and VCCs as conveniences to Users, and in doing so incurs certain costs. The expenses incurred and resources expended by the Exchange to provide these services generally include costs related to the data center facility hardware and technology infrastructure; maintenance and operational costs, such as the costs of responding to any production issues; and the costs related to the personnel required for initial installation and administration, monitoring, support and maintenance of such services. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing bandwidth required for Access and Connectivity, including resilient and redundant feeds. For example, the Exchange must ensure that the network infrastructure has the necessary bandwidth for connectivity to the Premium NYSE Data Products as well as the Included Data Products, as on a typical trading day no single Included Data Product will require as much bandwidth as a Premium NYSE Data Product for the same market. In addition, the Exchange incurs certain costs specific to providing connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds and DTCC, including the costs of maintaining multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing the Exchange to provide resilient and redundant connections; adapting to any changes made by the relevant third party; and covering any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

As noted above, co-location was created to permit Users "to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems."[40] The expectation was that normally Users "would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange."[41] Accordingly, the Exchange believes that including access to the Exchange Systems and connectivity to Included Data Products with the purchase of access to the LCN or IP network is reasonable because such access and connectivity is directly related to the purpose of co-location.

In addition, the Exchange believes that including access to the Exchange Systems and connectivity to the Included Data Products with the purchase of access to the LCN or IP network is reasonable and not unfairly discriminatory because Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives access to the Exchange Systems and connectivity to the Included Data Products that it selects, and a User can change which of such access or connections it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO. Including access to the Exchange Systems and connectivity to the Included Data Products with the purchase of access to the LCN or IP network is a decision based on an assessment of the competitive landscape. As noted above, the Exchange operates in a highly competitive market. If a particular exchange charges excessive fees for co-location services—such as excessive fees for access to the local area network within the exchange's colocation space—affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies. The Exchange believes that including connectivity to Included Data Products with the purchase of access to the LCN or IP network is consistent with Nasdaq's colocation service, which, apart from an installation fee, does not charge its co-located customers for connectivity to Nasdaq data.[42]

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[40] Original Co-Location Filing, *supra* note 4, at 59299.

[41] *Id.*

The Premium NYSE Data Products are equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products. Charging separate fees for connectivity to Premium NYSE Data Products, as opposed to Included Data Products, is a decision based on an assessment of the competitive landscape. The Exchange believes that it is reasonable and not unfairly discriminatory to charge Users for connectivity to Premium NYSE Data Products because Users are not required to use any of their bandwidth to connect to a Premium NYSE Data product unless they wish to do, and each User has several other connectivity options available to it. The expenses incurred and resources expended by the Exchange to offer connectivity to the Premium NYSE Data Products include costs related to the data center facility hardware and technology infrastructure, such as the cost of ensuring that the network infrastructure has the necessary bandwidth for the Premium NYSE Data Products; maintenance and operational costs, such as the costs of responding to any production issues; and the costs related to the personnel required for initial installation and administration, monitoring, support and maintenance of the connectivity. By charging only those Users that receive connectivity to a Premium NYSE Data Product, only the Users that directly benefit from such connectivity support its cost.

The Exchange believes that its fees for connectivity to Premium NYSE Data Products are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users connectivity to Premium NYSE Data Products while providing Users the benefit of reduced latency when connecting to data feeds that integrate, or include data elements from, several Included Data Products. Charging separate connectivity fees for Premium NYSE Data Products is a decision based on an assessment of the competitive landscape. As noted above, the Exchange operates in a highly competitive market. If a particular exchange charges excessive fees for co-location services—such as excessive fees for connectivity to the exchange's market data—affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies. Although Nasdaq does not include connectivity to any of the Premium NYSE Data Products in its co-location services, the Exchange believes that the proposed fees are generally consistent with the fees that a Nasdaq co-location customer would pay for connectivity to the individual feeds included in a Premium NYSE Data Product. For example, the NYSE Integrated Feed includes, among other things, information available from three of the Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances. Nasdaq offers connectivity to two of those feeds, OpenBook Ultra and NYSE Trades, for which it would charge a co-located customer a combined monthly fee of $2,600.[43] The Exchange believes that it is reasonable to charge less for connectivity to the resilient Premium NYSE Data Products on the LCN than over the IP network, because Users do not have the option to connect to Feed A or Feed B over the LCN.

The Exchange believes that charging separate connectivity fees for Third Party Data Feeds and access to Third Party Systems, third party testing and certification feeds and connectivity to DTCC is reasonable and not unfairly discriminatory because, in the Exchange's experience, not all Users connect to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds or DTCC. By charging only those Users that receive such connectivity, only the Users that directly benefit from it support its cost. In addition, Users are not required to use any of their bandwidth to connect to Third Party Data Feeds, third party testing and certification feeds or DTCC, or to access Third Party Systems, unless they wish to do so.

The Exchange believes the fees for connectivity to Third Party Data Feeds are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users connectivity to Third Party Data Feeds while providing Users the convenience of receiving such Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs. The Exchange believes that its proposed charges for connectivity to Third Party Data Feeds are similar to the connectivity fees Nasdaq imposes on its co-location customers. For instance, Nasdaq charges its co-location customers monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX.[44]

The Exchange believes that its connectivity fees for access to Third Party Systems are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the convenience of being able to access such Third Party Systems, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs. Similarly, the Exchange believes that its fees for connectivity to DTCC are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the benefit of an efficient connection to clearing, fund transfer, insurance, and settlement services.

The monthly recurring fees the Exchange charges Users for connectivity to Third Party Systems, the MSCI and SuperFeed Third Party Data Feeds, and DTCC, as well as for VCCs between Users, vary by the bandwidth of the connection. The Exchange also believes such fees are reasonable because the monthly recurring fee varies by the bandwidth of the connection, and so is generally proportional to the bandwidth required. The Exchange notes that some of the monthly recurring fees for connectivity to SuperFeed and DTCC differ from the fees for the other connections of the same bandwidth. The Exchange believes that such difference in pricing is reasonable, equitably allocated and not unfairly discriminatory because, although the bandwidth may be the same, the competitive considerations and the costs the Exchange incurs in providing such connections and VCCs may differ.

The Exchange also believes that its connectivity fees for access to third party testing and certification feeds are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development, and to certify conformance to any applicable technical requirements.

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[42] *See* Nasdaq Stock Market Rule 7034.

[43] *Id.*

[44] *See* Nasdaq Stock Market Rule 7034.

The Exchange believes it is reasonable that redistribution fees charged by providers of Third Party Data Feeds are passed through to the User, without change to the fee. If not passed through, the cost of the re-distribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the User, allowing the User to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.* the Exchange's fee and the redistribution fee.

The Exchange believes that it is reasonable that it does not charge third party markets or content providers for connectivity to their own Third Party Data Feeds, as in the Exchange's experience such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that it removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest to facilitate such diagnostics and testing.

Finally, the Exchange also believes that its fees for VCCs between two Users are reasonable because they allow the Exchange to defray or cover the costs associated with offering such VCCs while providing Users the benefit of an additional option for connectivity to another User, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form of connectivity that best suits their needs. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[45] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that providing Users with access to the Exchange Systems and Third Party Systems and connectivity to NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

Similarly, the Exchange believes that providing VCCs between Users does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because providing VCCs satisfies User demand for an alternative to cross connects.

The Exchange believes that revising the Price List and Fee Schedule to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Finally, the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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[45] 15 U.S.C. 78f(b)(8).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEMKT–2016–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEMKT–2016–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEMKT–2016–63, and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20456 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78627; File No. SR–NYSEArca–2016–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of the Natixis Seeyond International Minimum Volatility ETF Under NYSE Arca Equities Rule 8.600

August 22, 2016.

On May 5, 2016, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Natixis Seeyond International Minimum Volatility ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 25, 2016.[3] On June 13, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[4] On June 22, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[5] On July 1, 2016, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendments No. 1 and No. 2.[6] The Commission has received no comments on the proposed rule change.

On June 30, 2016, pursuant to section 19(b)(2) of the Act,[7] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[8] The Commission has not received any comments on the proposal, as modified by Amendment No. 3.

This order institutes proceedings under section 19(b)(2)(B) of the Act[9] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3.

I. The Exchange's Description of Proposal[10]

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by the Trust, which is registered with the Commission as an open-end management investment company. NGAM Advisors, L.P. will serve as the investment adviser and administrator to the Fund ("Adviser"). Natixis Asset Management U.S., LLC will serve as the Fund's sub-adviser ("Sub-Adviser"). State Street Bank and Trust Company will serve as custodian and transfer agent for the Fund.

Principal Investments

The Exchange states that, under normal circumstances,[11] the Fund will invest primarily in non-U.S. equity securities, which are common stocks and "Depositary Receipts."[12] The Fund may invest in companies of any size and typically will invest in a number of different countries throughout the world. The Fund's investments may include non-U.S. equity securities traded over-the-counter ("OTC") as well as those traded on a U.S. or foreign securities exchange.[13]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77861 (May 19, 2016), 81 FR 33291.

[4] In Amendment No. 1, the Exchange: (1) Narrows the universe of investments that may be held by the Fund; (2) discusses the types of corporate bonds of foreign issuers that the Fund would ordinarily hold; (3) clarifies potentially ambiguous language in the filing.

[5] In Amendment No. 2, the Exchange proposes standards for the corporate bonds of foreign issuers that may be held by the Fund and clarifies how spot foreign currency transactions would be priced for purposes of calculating the net asset value ("NAV") of the Fund.

[6] In Amendment No. 3, the Exchange revises the standards for the Fund's investment in non-U.S. equity securities. Amendments No. 1, No. 2, and No. 3 are available at: *http://www.sec.gov/comments/sr-nysearca-2016-67/nysearca201667.shtml.*

[7] 15 U.S.C. 78s(b)(2).

[8] *See* Securities Exchange Act Release No. 78204, 81 FR 44393 (July 7, 2016). The Commission designated a longer period within which to take action on the proposed rule change and designated August 23, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] The Commission notes that additional information regarding Natixis ETF Trust ("Trust"), the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of NAV, distributions, and taxes, among other things, can be found in Amendment No. 3, *supra* note 6, and the initial registration statement filed with the Commission on March 14, 2016 on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the Investment Company Act of 1940 (15 U.S.C. 80a–1) relating to the Fund (File Nos. 333–210156 and 811–23146) (File Nos. 333–210156 and 811–23146) ("Registration Statement"), as applicable.

[11] The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which the Fund's investments are made for temporary defensive purposes; operational issues (*e.g.*, systems failures) causing dissemination of inaccurate market information; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] Investments in common stock of foreign corporations may be in the form of American

Other Investments

The Exchange states that, while the Fund, under normal circumstances, will invest primarily (more than 50% of its assets) in non-U.S. equity securities, as described above, the Fund will invest its remaining assets in the securities and financial instruments described below ("Non-Principal Investments").

The Fund may invest in: certificates of deposit; time deposits, which are non-negotiable deposits maintained in a bank for a specified period of time up to seven days at a stated interest rate; and bankers' acceptances, which are credit instruments evidencing the obligation of a bank to pay a draft drawn on it by a customer.

The Fund also may purchase U.S. dollar-denominated obligations issued by foreign branches of domestic banks or foreign branches of foreign banks ("Eurodollar" obligations) and domestic branches of foreign banks ("Yankee dollar" obligations).

The Fund may invest in the following U.S. government securities: U.S. Treasury Bills; U.S. Treasury Notes and Bonds; U.S. Treasury Floating Rate Notes; and Treasury Inflation-Protected Securities.

The Fund may invest in other investment companies, including exchange-traded funds. The Fund may invest in U.S. or foreign exchange-traded real estate investment trusts ("REITs").

The Fund may invest in preferred stock traded on a U.S. or foreign exchange or OTC.

The Fund may invest in the following foreign debt securities, all or a portion of which may be non-U.S. dollar-denominated: (1) Debt obligations issued or guaranteed by non-U.S. national, provincial, state, municipal or other governments or by their agencies or instrumentalities, including "Brady Bonds"; (ii) debt obligations of supranational entities; (iii) debt obligations of the U.S. government issued in non-dollar securities; (iv) debt obligations and other fixed-income securities of foreign corporate issuers;[14] and (v) non-U.S. dollar-denominated securities of U.S. corporate issuers.

The Fund may engage in foreign currency transactions for both hedging and investment purposes. To protect against a change in the foreign currency exchange rate between the date on which the Fund contracts to purchase or sell a security and the settlement date for the purchase or sale, to gain exposure to one or more foreign currencies or to "lock in" the equivalent of a dividend or interest payment in another currency, the Fund might purchase or sell a foreign currency on a spot (*i.e.*, cash) basis at the prevailing spot rate.

The Fund may enter into repurchase agreements.

The Fund may invest in money market instruments. Money market instruments are high-quality, short-term securities.

The Fund may invest in U.S. equity securities (other than Depositary Receipts) that are traded on a U.S. exchange or OTC.

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2016–67 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[15] to determine whether the proposed rule change, as modified by Amendment No. 3, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 3. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 3.

Pursuant to section 19(b)(2)(B) of the Act,[16] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."[17]

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[18]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 16, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 30, 2016.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[19] in addition to any other comments they may wish to submit about the proposed rule change, as modified by Amendment No. 3. In

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Depositary Receipts ("ADRs") and Global Depositary Receipts (collectively "Depositary Receipts"). Not more than 10% of the Fund's assets will be invested in non-exchange-listed ADRs.

[13] Non-U.S. equity securities in the Fund's portfolio will meet the following criteria on a continual basis: (1) Non-U.S. equity securities each shall have a minimum market value of at least $100 million; (2) non-U.S. equity securities each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of $25,000,000, averaged over the last six months; (3) the most heavily weighted non-U.S. equity security shall not exceed 25% of the weight of the Fund's entire portfolio, and, to the extent applicable, the five most heavily weighted non-U.S. equity securities shall not exceed 60% of the weight of the Fund's entire portfolio; and (4) each non-U.S. equity security shall be listed and traded on an exchange that has last-sale reporting. *See* Amendment No. 3, *supra* note 6, at 6, n.8.

[14] Under normal circumstances, the Fund will invest in corporate bond issuances that have at least $100,000,000 par amount outstanding in developed countries and at least $200,000,000 par amount outstanding in emerging market countries. *See* Amendment No. 3, *supra* note 6, at 11.

[15] 15 U.S.C. 78s(b)(2)(B).

[16] *Id.*

[17] 15 U.S.C. 78f(b)(5).

[18] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[19] *See* Notice, *supra* note 3.

particular, the Commission seeks comment on the following:

1. In general, do commenters believe that the proposal is consistent with the requirements of section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest?

2. What are commenters' views regarding the lack of quantitative requirements proposed with respect to certain Non-Principal Investments (*e.g.*, U.S. equity securities other than Depositary Receipts, preferred stock, and foreign REITs), which may constitute up to 50% of the Fund's portfolio? Is the proposal adequate, with respect to Non-Principal Investments, to ensure that the price of the Shares is not susceptible to manipulation?

3. What are commenters' views regarding whether the proposal is adequate, with respect to Non-Principal Investments, to ensure adequate pricing transparency for assets held in the Fund's portfolio?

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2016–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2016–67. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–67 and should be submitted on or before September 16, 2016. Rebuttal comments should be submitted by September 30, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20454 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78628; File No. SR–NYSEArca–2016–89]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending the Co-location Services Offered by the Exchange To Add Certain Access and Connectivity Fees

August 22, 2016.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 16, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the co-location services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users with local area networks available in the data center; and (2) to establish fees relating to User's access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services. In addition, this proposed rule change reflects changes to the NYSE Arca Options Fee Schedule (the "Options Fee Schedule") and, through its wholly owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities"), the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Equities Fee Schedule" and, together with the Options Fee Schedule, the "Fee Schedules") related to these co-location services. The proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the co-location[4] services offered by the Exchange as follows: (1) To provide additional information regarding the access to trading and execution services and connectivity to data provided to Users[5] with local area networks available in the data center; and (2) to establish fees relating to Users' access to trading and execution services; connectivity to data feeds and to testing and certification feeds; access to clearing; and other services.

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[20] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100) (the "Original Co-location Filing"). The Exchange operates a data center in Mahwah, New Jersey (the "data center") from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act

More specifically, the Exchange proposes to revise the Fee Schedules to include:

a. A more detailed description of the access to the trading and execution systems of the Exchange and its Affiliate SROs (the "Exchange Systems") and connectivity to certain market data products (the "Included Data Products") that Users receive with connections to the Liquidity Center Network ("LCN") and internet protocol ("IP") network, local area networks available in the data center;

b. fees for connectivity to:

- Certain other market data products of the Exchange and its Affiliate SROs (the "Premium NYSE Data Products" and, together with the Included Data Products, the "NYSE Data Products");
- access to the execution systems of third party markets and other content service providers ("Third Party Systems");
- data feeds from third party markets and other content service providers (the "Third Party Data Feeds");
- third party testing and certification feeds;
- Depository Trust & Clearing Corporation ("DTCC") services; and

c. fees for virtual control circuits ("VCCs") between two Users. VCCs are unicast connections between two participants over dedicated bandwidth.[6]

The Exchange provides access to the Exchange Systems and Third Party Systems (together, "Access") and connectivity to NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC (collectively, "Connectivity") as conveniences to Users. Use of Access or Connectivity is completely voluntary, and several other access and connectivity options are available to a User. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the Exchange's Secure Financial Transaction Infrastructure ("SFTI") network, or a combination thereof.

Similarly, the Exchange provides VCCs as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a fiber connection ("cross connect").[7]

Access to Exchange Systems and Connectivity To Included Data Products

As the Exchange has previously stated, a User's connection to the LCN or IP network provides it access to the Exchange Systems and Exchange market data products.[8] More specifically, when a User purchases access to the LCN or IP network through purchase of a 1, 10, or 40 Gb LCN circuit, a 10 Gb LX Circuit, bundled network access, Partial Cabinet Solution bundle, or 1, 10 or 40 Gb IP network access,[9] as part of the purchase it receives access to the Exchange Systems and connectivity to any Included Data Products that it selects.[10] The Exchange proposes to revise the Fee Schedules to provide a more detailed description of the access to the Exchange Systems and connectivity to Included Data Products that comes with connections to the LCN or IP network.[11]

Access to certification and testing feeds comes with the purchase of access to the Exchange Systems and connectivity to many of the NYSE Data Products. Such feeds, which are solely used for certification and testing and do not carry live production data, are only available over the IP network.[12] Certification feeds are used to certify that a User conforms to any relevant technical requirements for receipt of data or access to Exchange Systems. Test feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming Exchange releases and product enhancements or the User's own software development.

The Exchange offers connectivity to NYSE Data Products in three forms: As a resilient feed, as "Feed A" or as "Feed B." Resilient feeds include two copies of the same feed, for redundancy purposes. Feed A and Feed B are identical feeds.[13]

Connectivity To Exchange Systems

As the Exchange has previously stated, Users' connections to the LCN or IP networks include access to Exchange Systems.[14] Accordingly, the Exchange proposes to add language to the Fee Schedules stating the following:

> When a User purchases access to the LCN or IP network, it receives the ability to connect to the trading and execution systems of the NYSE, NYSE MKT and NYSE Arca

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Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC ("NYSE LLC") and NYSE MKT LLC ("NYSE MKT and, together with NYSE LLC, the "Affiliate SROs"). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] Information flows over existing network connections in two formats: "unicast" format, which is a format that allows one-to-one communication, similar to a phone line, in which information is sent to and from the Exchange; and "multicast" format, which is a format in which information is sent one-way from the Exchange to multiple recipients at once, like a radio broadcast.

[7] *See* Original Co-location Filing, *supra* note 4, at 70049 and Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections and fiber cross connects between a User's cabinet and non-User's equipment as co-location services) (the "IP Network Release").

[8] *See* Original Co-location Filing, *supra* note 4, at 70049 ("SFTI and LCN both provide Users with access to the Exchange's trading and execution systems and to the Exchange's proprietary market data products.") and IP Network Release, *supra* note 7, at 7899 ("Like the LCN, the IP network provides Users with access to the Exchange's trading and execution systems and to the Exchanges' proprietary market data products."). The IP network was previously sometimes referred to as SFTI. *See id.*

[9] *See* Securities Exchange Act Release Nos. 70887 (November 15, 2013), 78 FR 69897 (November 21, 2013) (SR–NYSEArca–2013–123); 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR–NYSEArca–2014–81); 76372 (November 5, 2015), 80 FR 70039 (November 12, 2015) (SR–NYSEArca-2015–105); and 77070 (February 5, 2016), 81 FR 7401 (February 11, 2016) (SR–NYSEArca-2015–102).

[10] As discussed below, in order to connect to an Included Data Product, a User must have entered into a contract with the provider of the data feed. Similarly, in order to access an Exchange System, the User must have authorization from the Exchange or the relevant Affiliate SRO.

[11] Because each Included Data Product uses part of a User's bandwidth, a User may wish to limit the number of Included Data Products that it receives to those that it requires. The Exchange notes that connectivity to the LCN and IP network also includes connectivity to Exchange Systems, as discussed under "Connectivity to Exchange Systems," below. *See also* note 8, *supra.*

[12] A User that does not have an IP network connection may obtain an IP network circuit for purposes of testing and certification for free for three months. *See* IP Network Release, *supra* note 7, at 7899. A User that opted to obtain connectivity to NYSE Data Products through another User, a telecommunication provider, third party wireless network, or the SFTI network would receive the corresponding testing and certification feeds.

[13] A User that wants redundancy would connect to both Feed A and Feed B or two resilient feeds, using two different ports. A User may opt to connect both Feed A and Feed B to the same port, the effect of which would be the same as if the User had connected to a resilient feed. The form of feed that a User selects may affect the connection it requires. For example, a User connecting to the NYSE Arca Integrated Feed, NYSE Integrated Feed or NYSE MKT Integrated Feed would need at least a 1 Gb IP network connection in order to connect to either Feed A or Feed B. To connect to a resilient feed, the User would require an LCN or IP network connection of at least 10 Gb.

[14] *See* note 8, *supra.*

(Exchange Systems), subject, in each case, to authorization by the NYSE, NYSE MKT or NYSE Arca, as applicable. Such connectivity includes access to the customer gateways that provide for order entry, order receipt (*i.e.* confirmation that an order has been received), receipt of drop copies and trade reporting (*i.e.* whether a trade is executed or cancelled), as well as for sending information to shared data services for clearing and settlement. A User can change the connections it receives at any time, subject to authorization. A User does not have to purchase access to the LCN or IP network in order to obtain connectivity to Exchange Systems.

Connectivity to Included Data Products

Currently, there are three categories of data feeds for which the Exchange offers Users connectivity: Included Data Products; Premium NYSE Data Products; and Third Party Data.[15]

The Included Data Products include the data feeds disseminated by the Consolidated Tape Association ("CTA") (such data feeds, the "NMS feeds"). CTA is responsible for disseminating consolidated, real-time trade and quote information in NYSE listed securities (Network A) and NYSE MKT, NYSE Arca and other regional exchanges' listed securities (Network B) pursuant to a national market system plan.[16] The NMS feeds include the Consolidated Tape System and Consolidated Quote System data streams, as well as Options Price Reporting Authority feeds.

In order to connect to an Included Data Product, a User enters into a contract with the provider of such data, pursuant to which the User is charged for the Included Data Product. After the User and data provider enter into the contract and the Exchange receives authorization from the provider of the data feed, the Exchange provides the User with connectivity to the Included Data Product over the User's LCN or IP network port. The Exchange does not charge the User separately for such connectivity to the Included Data Product, as it is included in the purchase of the access to the LCN or IP network.

The Included Data Products are available over both the LCN and IP network.[17] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Included Data Products between its LCN and IP network connections. Some Included Data Products require a network connection with a minimum gigabyte ("Gb") size in order to accommodate the feed.

Users may connect to an Included Data Product as a resilient feed or as individual Feeds A and B.

The Included Data Products are as follows:

NMS feeds
NYSE:
NYSE Alerts
NYSE BBO
NYSE OpenBook
NYSE Order Imbalances
NYSE Trades
NYSE Amex Options
NYSE Arca:
NYSE ArcaBook
NYSE Arca BBO
NYSE Arca Order Imbalances
NYSE Arca Trades
NYSE Arca Options
NYSE Bonds
NYSE MKT:
NYSE MKT Alerts
NYSE MKT BBO
NYSE MKT OpenBook
NYSE MKT Order Imbalances
NYSE MKT Trades

In addition to the above list of Included Data Products, the Exchange proposes to add the following language to the Fee Schedules:

> When a User purchases access to the LCN or IP network it receives connectivity to any of the Included Data Products that it selects, subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Included Data Products are charged by the provider of the data feed. A User can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of the data feed. The Exchange is not the exclusive method to connect to the Included Data Products.

Connectivity

Connectivity to Premium NYSE Data Products

The Exchange offers Users connectivity to Premium NYSE Data Products from the Exchange and its Affiliate SROs over Users' LCN and IP network connections. The Exchange proposes to revise the Fee Schedules to specify the connectivity fees for Premium NYSE Data Products.

The Premium NYSE Data Products are equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products.[18] For example, the NYSE Integrated Feed includes, among other things, information available from three of the equity Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances.[19] The NYSE BQT data feed includes, among other things, certain data elements from six of the equity Included Data Products: NYSE Trades, NYSE BBO, NYSE Arca Trades, NYSE Arca BBO, NYSE MKT Trades, and NYSE MKT BBO.[20]

By contrast, while some of the Included Data Products include data elements from other Included Data Products, no single Included Data Product includes as much data as a Premium NYSE Data Product for the same market. With the exception of NYSE Arca Order Imbalances, the equity Included Data Products were introduced before the Premium Data Products.[21]

There are no Premium NYSE Data Products for the NYSE Amex Options or NYSE Arca Options markets, as there are no options data products that integrate, or include data elements from, other option data products in the same manner that the NYSE, NYSE MKT and NYSE Arca Integrated Feeds integrate, or include data elements from, equity Included Data Products.

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[15] The NYSE Data Products and Third Party Data Feeds do not provide access or order entry to the Exchange's execution system.

[16] The Included Data Products do not include connectivity to the data feeds disseminated pursuant to the "Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis" (the "UTP Plan"). The UTP Plan is responsible for disseminating consolidated, real-time trade and quote information in Nasdaq Stock Exchange LLC listed securities (Network C). Connectivity to data disseminated pursuant to the UTP Plan is available as a Third Party Data Feed.

[17] As noted above, certification and testing feeds included with an Included Data Product are only available over the IP network.

[18] The rule changes establishing the NYSE Integrated Feed and NYSE MKT Integrated Feed were immediately effective in 2015, and the rule change establishing the NYSE Arca Integrated Data Feed was immediately effective in 2011. The NYSE Best Quote & Trades ("NYSE BQT") data feed was approved in 2014. *See* Securities Exchange Act Release Nos. 74128 (Jan. 23, 2015), 80 FR 4951 (Jan. 29, 2015) (SR–NYSE–2015–03) (establishing the NYSE Integrated Feed); 74127 (Jan. 23, 2015), 80 FR 4956 (Jan. 29, 2015) (SR–NYSEMKT–2015–06) (establishing the NYSE MKT Integrated Feed); 65669 (Nov. 2, 2011), 76 FR 69311 (Nov. 8, 2011) (SR–NYSEArca–2011–78) (establishing the NYSE Arca Integrated Feed); and 73553 (Nov. 6, 2014), 79 FR 67491 (Nov. 13, 2014) (SR–NYSE–2014–40) (establishing the NYSE Best Quote & Trades Data Feed).

[19] *See* SR–NYSE–2015–03, *supra* note 18, at 4952.

[20] *See* SR–NYSE–2014–40, *supra* note 18, at 67491.

[21] *See* Securities Exchange Release Nos. 53952 (June 7, 2006), 71 FR 33496 (June 9, 2006) (establishing fees for ArcaBook); 53591 (June 7, 2006), 71 FR 33500 (June 9, 2006) (establishing pilot program for NYES Arca BBO); 59289 (January 23, 2009), 74 FR 5711 (January 30, 2009) (SR–NYSEArca–2009–06) (establishing pilot program for NYSE Arca Trades); and 76968 (January 22, 2016), 81 FR 4689 (January 27, 2016) (establishing NYSE Arca Order Imbalances). NYSE Arca Order Imbalances, NYSE Order Imbalances and NYSE MKT Order Imbalances are all Included Data Products.

In order to connect to a Premium NYSE Data Product, a User enters into a contract with the provider of such data, pursuant to which it is charged for the Premium NYSE Data Product. After the data provider and User enter into the contract and the Exchange receives authorization from the data provider, the Exchange provides the User with connectivity to the Premium NYSE Data Product over the User's LCN or IP network port. The Exchange charges the User for the connectivity to the Premium NYSE Data Product. A User only receives, and is only charged for, connectivity to the Premium NYSE Data Product feeds that it selects.

The Premium NYSE Data Products are available over both the LCN and IP network.[22] For a User that purchases access to the LCN and IP network, the Exchange works with such User to allocate its connectivity to Premium NYSE Data Products between its LCN and IP network connections. Some Premium NYSE Data Products require a network connection with a minimum Gb size in order to accommodate the feed.[23]

A User can opt to connect to a Premium NYSE Data Product as a resilient feed or as Feed A or Feed B. Connectivity to the two identical Feeds A and B is only available on the IP network.

The Exchange charges a monthly recurring fee for connectivity to Premium NYSE Data Products. The following table shows the Premium NYSE Data Products and corresponding monthly recurring connectivity fees.

Premium NYSE data product	Feed	Monthly recurring connectivity fee per feed
NYSE Arca Integrated Feed	Feed A, IP network only	$1,500
	Feed B, IP network only	1,500
	Resilient, IP network only	3,000
	Resilient, LCN only	1,500
NYSE Best Quote and Trades (BQT)	Feed A, IP network only	500
	Feed B, IP network only	500
	Resilient, IP network only	1,000
	Resilient, LCN only	500
NYSE Integrated Feed	Feed A, IP network only	1,500
	Feed B, IP network only	1,500
	Resilient, IP network only	3,000
	Resilient, LCN only	1,500
NYSE MKT Integrated Feed	Feed A, IP network only	300
	Feed B, IP network only	300
	Resilient, IP network only	600
	Resilient, LCN only	300

In addition to the connectivity fees, the Exchange proposes to add the following language to the Fee Schedules:

> Pricing for Premium NYSE Data Products is for connectivity only. Connectivity to Premium NYSE Data Products is subject to any technical provisioning requirements and authorization from the provider of the data feed. Market data fees for the Premium NYSE Data Products are charged by the provider of the data feed. The Exchange is not the exclusive method to connect to Premium NYSE Data Products.

Connectivity to Third Party Systems

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to Third Party Systems of multiple third party markets and other content service providers for a fee. Users connect to Third Party Systems over the IP network.[24] The Exchange selects what connectivity to Third Party Systems to offer in the data center based on User demand.

In order to obtain access to a Third Party System, a User enters into an agreement with the relevant third party content service provider, pursuant to which the third party content service provider charges the User for access to the Third Party System. The Exchange then establishes a unicast connection between the User and the relevant third party content service provider over the IP network. The Exchange charges the User for the connectivity to the Third Party System. A User only receives, and is only charged for, access to Third Party Systems for which it enters into agreements with the third party content service provider.

With the exception of the ICE feed,[25] the Exchange has no ownership interest in the Third Party Systems. Establishing a User's access to a Third Party System does not give the Exchange any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange's execution system, and a User's connection to a Third Party System is not through the Exchange's execution system.[26]

The Exchange charges a monthly recurring fee for connectivity to a Third Party System. Specifically, when a User requests access to a Third Party System, it identifies the applicable third party market or other content service provider and what bandwidth connection it requires.

The monthly recurring fee the Exchange charges Users for unicast connectivity to each Third Party System varies by the bandwidth of the connection, as follows:

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[22] As noted above, certification and testing feeds included with a Premium NYSE Data Product are only available over the IP network.

[23] *See* note 13, *supra.*

[24] *See* IP Network Release, *supra* note 7, at 7899.

[25] ICE is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc., and so the Exchange has an indirect interest in the ICE feeds. The ICE feeds include both market data and trading and clearing services, but the Exchange includes it as a Third Party Data Feed. In order for a User to receive an ICE feed, ICE must provide authorization for the User to receive both data and trading and clearing services.

[26] The Exchange has a dedicated network connection to each of the Third Party Systems.

Bandwidth of connection to third party system	Monthly recurring fee per connection to third party system
1Mb	$200
3Mb	400
5Mb	500
10Mb	800
25Mb	1,200
50Mb	1,800
100Mb	2,500
200 Mb	3,000
1 Gb	3,500

The Exchange provides connectivity to the following Third Party Systems:

Americas Trading Group (ATG)
BATS
Boston Options Exchange (BOX)
Chicago Board Options Exchange (CBOE)
Credit Suisse
International Securities Exchange (ISE)
Nasdaq
National Stock Exchange
NYFIX Marketplace

In addition to the connectivity fees, the Exchange proposes to add language to the Fee Schedules stating the following:

> Pricing for access to the execution systems of third party markets and other service providers (Third Party Systems) is for connectivity only. Connectivity to Third Party Systems is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Systems is over the IP network. Any applicable fees are charged independently by the relevant third party content service provider. The Exchange is not the exclusive method to connect to Third Party Systems.

Connectivity to Third Party Data Feeds

The Exchange proposes to revise the Fee Schedules to provide that Users may obtain connectivity to Third Party Data Feeds for a fee. The Exchange receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at its data center. It then provides connectivity to that data to Users for a fee. With the exceptions of Global OTC and NYSE Global Index, Users connect to Third Party Data Feeds over the IP network.[27]

The Exchange notes that charging Users a monthly fee for connectivity to Third Party Data Feeds is consistent with the monthly fee Nasdaq charges its co-location customers for connectivity to third party data. For instance, Nasdaq charges its co-location customers monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX.[28]

In order to connect to a Third Party Data Feed, a User enters into a contract with the relevant third party market or other content service provider, pursuant to which the content service provider charges the User for the Third Party Data Feed. The Exchange receives the Third Party Data Feed over its fiber optic network and, after the data provider and User enter into the contract and the Exchange receives authorization from the data provider, the Exchange re-transmits the data to the User over the User's port. The Exchange charges the User for the connectivity to the Third Party Data Feed. A User only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it enters into contracts.

With the exception of the Intercontinental Exchange ("ICE"), Global OTC and NYSE Global Index feeds,[29] the Exchange has no affiliation with the sellers of the Third Party Data Feeds. It has no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange's execution system. With the exception of the ICE feeds, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed.[30] The Exchange receives Third Party Data Feeds via arms-length agreements and it has no inherent advantage over any other distributor of such data.

The Exchange charges a monthly recurring fee for connectivity to each Third Party Data Feed. The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring feed for SuperFeed and MSCI varies by the bandwidth of the connection. Depending on its needs and bandwidth, a User may opt to receive all or some of the feeds or services included in a Third Party Data Feed.

The following table shows the feeds that connectivity to each Third Party Data Feed provides, together with the applicable monthly recurring fee.

Third Party Data Feed	Monthly recurring connectivity fee per Third Party Data Feed
Bats BZX Exchange (BZX) and Bats BYX Exchange (BYX)	$2,000
Bats EDGX Exchange (EDGX) and Bats EDGA Exchange (EDGA)	2,000
Chicago Board Options Exchange (CBOE)	2,000
Chicago Stock Exchange (CHX)	400
Euronext	600
Financial Industry Regulatory Authority (FINRA)	500
Global OTC	100
Intercontinental Exchange (ICE)	1,500
Montréal Exchange (MX)	1,000
MSCI 5 Mb	500
MSCI 25 Mb	1,200
NASDAQ Stock Market	2,000
NASDAQ OMX Global Index Data Service	100
NASDAQ OMDF	100
NASDAQ UQDF& UTDF	500
NYSE Global Index	100
OTC Markets Group	1,000
SR Labs—SuperFeed ≤500 Mb	250
SR Labs—SuperFeed >500 Mb to ≤1.25 Gb	800
SR Labs—SuperFeed >1.25 Gb	1,000
TMX Group	2,500

In addition to the above connectivity fees, the Exchange proposes to add the following language to the Fee Schedules:

> Pricing for data feeds from third party markets and other content service providers (Third Party Data Feeds) is for connectivity only. Connectivity to Third Party Data Feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to Third Party Data Feeds is over the IP network, with the exception that Users can connect to Global OTC and NYSE Global Index over the IP network or LCN. Market data fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to Third Party Data Feeds.

Third Party Data Feed providers may charge redistribution fees, such as Nasdaq's Extranet Access Fees and OTC Markets Group's Access Fees.[31] When the Exchange receives a redistribution fee, it passes through the charge to the User, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the User's invoice. The Exchange proposes to add language to the Fee Schedules accordingly.

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[27] *See* IP Network Release, *supra* note 7, at 7899 ("The IP network also provides Users with access to away market data products."). Users can connect to Global OTC and NYSE Global Index over the IP network or LCN.

[28] *See* Nasdaq Stock Market Rule 7034.

[29] ICE and the Global OTC alternative trading system are both owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc., and so the Exchange has an indirect interest in the ICE and Global OTC feeds. The NYSE Global Index feed includes index and exchange traded product valuations data, with data drawn from the Exchange, the Affiliate SROs, and third party exchanges. Because it includes third party data, the NYSE Global Index feed is considered a Third Party Data Feed. As with all Third Party Data Feeds, the Exchange is not the exclusive method to connect to the ICE, Global OTC or NYSE Global Index feeds.

[30] Unlike other Third Party Data Feeds, the ICE feeds include both market data and trading and clearing services. In order to receive the ICE feeds, a User must receive authorization from ICE to receive both market data and trading and clearing services.

[31] *See* NASDAQ Stock Market LLC Rule 7025, "Extranet Access Fee", and OTC Markets Market Data Distribution Agreement Appendix B, "Fees" at

The Exchange provides third party markets or content providers that are also Users connectivity to their own Third Party Data Feeds. The Exchange does not charge Users that are third party markets or content providers for connectivity to their own feeds, as in the Exchange's experience such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange proposes to add language to the Fee Schedules accordingly.

Connectivity to Third Party Testing and Certification Feeds

The Exchange offers Users connectivity to third party certification and testing feeds. Certification feeds are used to certify that a User conforms to any of the relevant content service provider's requirements for accessing Third Party Systems or receiving Third Party Data, while testing feeds provide Users an environment in which to conduct tests with non-live data.[32] Such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IP network.

The Exchange proposes to revise the Fee Schedules to include connectivity to third party certification and testing feeds. The Exchange charges a connectivity fee of $100 per month per feed.

The Exchange proposes to add the following connectivity fees and language to the Fee Schedules:

Connectivity to third party certification and testing feeds.	$100 monthly recurring fee per feed

The Exchange provides connectivity to third party testing and certification feeds provided by third party markets and other content service providers. Pricing for third party testing and certification feeds is for connectivity only. Connectivity to third party testing and certification feeds is subject to any technical provisioning requirements and authorization from the provider of the data feed. Connectivity to third party testing and certification feeds is over the IP network. Any applicable fees are charged independently by the relevant third party market or content service provider. The Exchange is not the exclusive method to connect to third party testing and certification feeds.

Connectivity to DTCC

The Exchange provides Users connectivity to DTCC for clearing, fund transfer, insurance, and settlement services.[33] The Exchange proposes to revise the Fee Schedules to include connectivity to DTCC. The Exchange charges a connectivity fee of $500 per month for connections to DTCC of 5 Mb and $2,500 for connections of 50 Mb. Connectivity to DTCC is available over the IP network.

In order to connect to DTCC, a User enters into a contract with DTCC, pursuant to which DTCC charges the User for the services provided. The Exchange receives the DTCC feed over its fiber optic network and, after DTCC and the User enter into the services contract and the Exchange receives authorization from DTCC, the Exchange provides connectivity to DTCC to the User over the User's IP network port. The Exchange charges the User for the connectivity to DTCC.

Connectivity to DTCC does not provide access or order entry to the Exchange's execution system, and a User's connection to DTCC is not through the Exchange's execution system.

The Exchange proposes to add the following connectivity fees and language to the Fee Schedules:

5 Mb connection to DTCC	$500 monthly recurring fee
50 Mb connection to DTCC ..	$2,500 monthly recurring fee

Pricing for connectivity to DTCC feeds is for connectivity only. Connectivity to DTCC feeds is subject to any technical provisioning requirements and authorization from DTCC. Connectivity to DTCC feeds is over the IP network. Any applicable fees are charged independently by DTCC. The Exchange is not the exclusive method to connect to DTCC feeds.

Virtual Control Circuits

Finally, the Exchange proposes to revise the Fee Schedules to offer VCCs between two Users. VCCs are connections between two points over dedicated bandwidth using the IP network. A VCC (previously called a "peer to peer" connection) is a two-way connection which the two participants can use for any purpose.

The Exchange bills the User requesting the VCC, but will not set up a VCC until the other User confirms that it wishes to have the VCC set up.

The Exchange proposes to revise the Fee Schedules to include VCCs between two Users. The fee for VCCs is based on the bandwidth utilized, as follows:

Type of service	Description	Amount of charge
Virtual Control Circuit between two Users	1Mb	$200 monthly charge.
	3Mb	400 monthly charge.
	5Mb	500 monthly charge.
	10Mb	800 monthly charge.
	25Mb	1,200 monthly charge.
	50Mb	1,800 monthly charge.
	100Mb	2,500 monthly charge.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[34] and (iii) a User would only

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http://www.otcmarkets.com/content/doc/market-data-fees-2016.pdf. See also Securities Exchange Act Release No. 74040 (January 13, 2015), 80 FR 2460 (January 16, 2015) (SR–NASDAQ–2015–003).

[32] For example, a User that trades on a third party exchange may wish to test the exchange's upcoming releases and product releases or may wish to test a new algorithm in a testing environment prior to making it live.

[33] Such connectivity to DTCC is distinct from the access to shared data services for clearing and settlement services that a User receives when it purchases access to the LCN or IP network. The shared data services allow Users and other entities with access to the Trading Systems to post files for settlement and clearing services to access.

[34] As is currently the case, Users that receive co-location services from the Exchange will not receive

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incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or both of its Affiliate SROs.[35]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[36] in general, and furthers the objectives of sections 6(b)(5) of the Act,[37] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering Access and Connectivity, the Exchange gives each User additional options for addressing its access and connectivity needs, responding to User demand for access and connectivity options. Providing Access and Connectivity helps each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access and connectivity that best suits its needs. The Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof.

Co-location was created to permit Users "to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems." [38] The Exchange believes that providing Users access to the Exchange Systems and connectivity to Included Data Products to Users with their purchase of access to the LCN or IP network, as well as revising the Fee Schedules to provide a more detailed description of such access and connectivity, would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because such access and connectivity is directly related to the purpose of co-location. In addition, the proposed changes would make the descriptions of access to the LCN and IP network more accessible and transparent, thereby providing market participants with clarity as to what connectivity is included in the purchase of access to the LCN and IP network.

The Exchange believes that providing access to Third Party Systems and connectivity to Premium NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds and DTCC, as well as revising the Fee Schedules to describe such services, would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed changes would make the descriptions of market participants' access and connectivity options and the related fees more accessible and transparent, thereby providing market participants with clarity as to what options for connectivity are available to them and what the related costs are.

In addition, the Exchange believes that providing connectivity to third party testing and certification feeds removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because such feeds provide Users an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development, and allow Users to certify conformance to any applicable technical requirements.

Similarly, the Exchange believes that providing connectivity to DTCC removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest because it provides efficient connection to clearing, fund transfer, insurance, and settlement services.

The Exchange believes that providing Users with VCCs removes impediments to, and perfects the mechanisms of, a free and open market and a national market system because VCCs provide each User with an additional option for connectivity to another User, helping it tailor its data center operations to the requirements of its business operations by allowing it to select the form of connectivity that best suits its needs. The Exchange provides VCCs as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

The Exchange also believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[39] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fees changes are consistent with section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition

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any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[35] *See* SR–NYSEArca–2013–80, *supra* note 5, at 50459. The Affiliate SROs have also submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2016–45 and SR–NYSEArca–2016–89.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] Original Co-Location Filing, *supra* note 4, at 59299.

[39] 15 U.S.C. 78f(b)(4).

for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the services and fees proposed herein are equitably allocated and not unfairly discriminatory because, in addition to the services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same products and services are available to all Users). All Users that voluntarily select to access the Exchange Systems or connect to Included Data Products would not be subject to a charge above and beyond the fee paid for the relevant LCN or IP network access. All Users that voluntarily select to receive access to Third Party Systems, connectivity to Premium NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds and DTCC, or a VCC between Users would be charged the same amount for the same services.

The Exchange believes that the services and fees proposed herein are reasonable, equitably allocated and not unfairly discriminatory because the Exchange provides Access and Connectivity as conveniences to Users. Use of Access or Connectivity is completely voluntary, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. Similarly, the Exchange provides VCCs between Users as a convenience to Users. Use of a VCC is completely voluntary. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

Overall, the Exchange believes that the proposed charges are reasonable, equitably allocated and not unfairly discriminatory because the Exchange offers Access, Connectivity, and VCCs as conveniences to Users, and in doing so incurs certain costs. The expenses incurred and resources expended by the Exchange to provide these services generally include costs related to the data center facility hardware and technology infrastructure; maintenance and operational costs, such as the costs of responding to any production issues; and the costs related to the personnel required for initial installation and administration, monitoring, support and maintenance of such services. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including the increasing bandwidth required for Access and Connectivity, including resilient and redundant feeds. For example, the Exchange must ensure that the network infrastructure has the necessary bandwidth for connectivity to the Premium NYSE Data products as well as the Included Data Products, as on a typical trading day no single Included Data Product will require as much bandwidth as a Premium NYSE Data Product for the same market. In addition, the Exchange incurs certain costs specific to providing connectivity to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds and DTCC, including the costs of maintaining multiple connections to each Third Party Data Feed, Third Party System, and DTCC, allowing the Exchange to provide resilient and redundant connections; adapting to any changes made by the relevant third party; and covering any applicable fees (other than redistribution fees) charged by the relevant third party, such as port fees.

As noted above, co-location was created to permit Users "to rent space on premises controlled by the Exchange in order that they may locate their electronic servers in close physical proximity to the Exchange's trading and execution systems."[40] The expectation was that normally Users "would expect reduced latencies in sending orders to the Exchange and in receiving market data from the Exchange."[41] Accordingly, the Exchange believes that including access to the Exchange Systems and connectivity to Included Data Products with the purchase of access to the LCN or IP network is reasonable because such access and connectivity is directly related to the purpose of co-location.

In addition, the Exchange believes that including access to the Exchange Systems and connectivity to the Included Data Products with the purchase of access to the LCN or IP network is reasonable and not unfairly discriminatory because Users are not required to use any of their bandwidth to access Exchange Systems or connect to an Included Data Product unless they wish to do so. Rather, a User only receives access to the Exchange Systems and connectivity to the Included Data Products that it selects, and a User can change which of such access or connections it receives at any time, subject to authorization from the data provider or relevant Exchange or Affiliate SRO. Including access to the Exchange Systems and connectivity to the Included Data Products with the purchase of access to the LCN or IP network is a decision based on an assessment of the competitive landscape. As noted above, the Exchange operates in a highly competitive market. If a particular exchange charges excessive fees for co-location services—such as excessive fees for access to the local area network within the exchange's colocation space—affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies. The Exchange believes that including connectivity to Included Data Products with the purchase of access to the LCN or IP network is consistent with Nasdaq's colocation service, which, apart from an installation fee, does not charge its co-located customers for connectivity to Nasdaq data.[42]

The Premium NYSE Data Products are equity market data products that are variants of the equity Included Data Products. Each Premium NYSE Data Product integrates, or includes data elements from, several Included Data Products. Charging separate fees for connectivity to Premium NYSE Data

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[40] Original Co-Location Filing, *supra* note 4, at 70049.

[41] *Id.*

[42] *See* Nasdaq Stock Market Rule 7034.

Products, as opposed to Included Data Products, is a decision based on an assessment of the competitive landscape. The Exchange believes that it is reasonable and not unfairly discriminatory to charge Users for connectivity to Premium NYSE Data Products because Users are not required to use any of their bandwidth to connect to a Premium NYSE Data product unless they wish to do, and each User has several other connectivity options available to it. The expenses incurred and resources expended by the Exchange to offer connectivity to the Premium NYSE Data Products include costs related to the data center facility hardware and technology infrastructure, such as the cost of ensuring that the network infrastructure has the necessary bandwidth for the Premium NYSE Data Products; maintenance and operational costs, such as the costs of responding to any production issues; and the costs related to the personnel required for initial installation and administration, monitoring, support and maintenance of the connectivity. By charging only those Users that receive connectivity to a Premium NYSE Data Product, only the Users that directly benefit from such connectivity support its cost.

The Exchange believes that its fees for connectivity to Premium NYSE Data Products are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users connectivity to Premium NYSE Data Products while providing Users the benefit of reduced latency when connecting to data feeds that integrate, or include data elements from, several Included Data Products. Charging separate connectivity fees for Premium NYSE Data Products is a decision based on an assessment of the competitive landscape. As noted above, the Exchange operates in a highly competitive market. If a particular exchange charges excessive fees for co-location services—such as excessive fees for connectivity to the exchange's market data—affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies. Although Nasdaq does not include connectivity to any of the Premium NYSE Data Products in its co-location services, the Exchange believes that the proposed fees are generally consistent with the fees that a Nasdaq co-location customer would pay for connectivity to the individual feeds included in a Premium NYSE Data Product. For example, the NYSE Integrated Feed includes, among other things, information available from three of the Included Data Products: NYSE OpenBook, NYSE Trades, and NYSE Order Imbalances. Nasdaq offers connectivity to two of those feeds, OpenBook Ultra and NYSE Trades, for which it would charge a co-located customer a combined monthly fee of $2,600.[43] The Exchange believes that it is reasonable to charge less for connectivity to the resilient Premium NYSE Data Products on the LCN than over the IP network, because Users do not have the option to connect to Feed A or Feed B over the LCN.

The Exchange believes that charging separate connectivity fees for Third Party Data Feeds and access to Third Party Systems, third party testing and certification feeds and connectivity to DTCC is reasonable and not unfairly discriminatory because, in the Exchange's experience, not all Users connect to Third Party Data Feeds, Third Party Systems, third party testing and certification feeds or DTCC. By charging only those Users that receive such connectivity, only the Users that directly benefit from it support its cost. In addition, Users are not required to use any of their bandwidth to connect to Third Party Data Feeds, third party testing and certification feeds or DTCC, or to access Third Party Systems, unless they wish to do so.

The Exchange believes the fees for connectivity to Third Party Data Feeds are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users connectivity to Third Party Data Feeds while providing Users the convenience of receiving such Third Party Data Feeds within co-location, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs. The Exchange believes that its proposed charges for connectivity to Third Party Data Feeds are similar to the connectivity fees Nasdaq imposes on its co-location customers. For instance, Nasdaq charges its co-location customers monthly fees of $1,500 and $4,000 for connectivity to BATS Y and BATS, respectively, and of $2,500 for connectivity to EDGA or EDGX.[44]

The Exchange believes that its connectivity fees for access to Third Party Systems are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the convenience of being able to access such Third Party Systems, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form and latency of connectivity that best suits their needs. Similarly, the Exchange believes that its fees for connectivity to DTCC are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the benefit of an efficient connection to clearing, fund transfer, insurance, and settlement services.

The monthly recurring fees the Exchange charges Users for connectivity to Third Party Systems, the MSCI and SuperFeed Third Party Data Feeds, and DTCC, as well as for VCCs between Users, vary by the bandwidth of the connection. The Exchange also believes such fees are reasonable because the monthly recurring fee varies by the bandwidth of the connection, and so is generally proportional to the bandwidth required. The Exchange notes that some of the monthly recurring fees for connectivity to SuperFeed and DTCC differ from the fees for the other connections of the same bandwidth. The Exchange believes that such difference in pricing is reasonable, equitably allocated and not unfairly discriminatory because, although the bandwidth may be the same, the competitive considerations and the costs the Exchange incurs in providing such connections and VCCs may differ.

The Exchange also believes that its connectivity fees for access to third party testing and certification feeds are reasonable because they allow the Exchange to defray or cover the costs associated with offering such access while providing Users the benefit of having an environment in which to conduct tests with non-live data, including testing for upcoming releases and product enhancements or the User's own software development, and to certify conformance to any applicable technical requirements.

The Exchange believes it is reasonable that redistribution fees charged by providers of Third Party Data Feeds are passed through to the User, without change to the fee. If not passed through, the cost of the re-distribution fees would be factored into the proposed fees for connectivity to Third Party Data Feeds. The Exchange believes that passing through the fees makes them more transparent to the User, allowing the User to better assess the cost of the connectivity to a Third Party Data Feed by seeing the individual components of the cost, *i.e.* the Exchange's fee and the redistribution fee.

The Exchange believes that it is reasonable that it does not charge third party markets or content providers for connectivity to their own Third Party Data Feeds, as in the Exchange's experience such parties generally receive their own feeds for purposes of diagnostics and testing. The Exchange believes that it removes impediments to, and perfects the mechanisms of, a free and open market and a national market system and, in general, protects investors and the public interest to facilitate such diagnostics and testing.

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[43] *Id.*

[44] *See* Nasdaq Stock Market Rule 7034.

Finally, the Exchange also believes that its fees for VCCs between two Users are reasonable because they allow the Exchange to defray or cover the costs associated with offering such VCCs while providing Users the benefit of an additional option for connectivity to another User, helping them tailor their data center operations to the requirements of their business operations by allowing them to select the form of connectivity that best suits their needs. As an alternative to an Exchange-provided VCC, a User may connect to another User through a cross connect.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,[45] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users).

The Exchange believes that providing Users with access to the Exchange Systems and Third Party Systems and connectivity to NYSE Data Products, Third Party Data Feeds, third party testing and certification feeds, and DTCC does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such Access and Connectivity satisfies User demand for access and connectivity options, and each User has several other access and connectivity options available to it. As alternatives to using the Access and Connectivity provided by the Exchange, a User may access or connect to such services and products through another User or through a connection to an Exchange access center outside the data center, third party access center, or third party vendor. The User may make such connection through a third party telecommunication provider, third party wireless network, the SFTI network, or a combination thereof. Users that opt to use Access or Connectivity would not receive access or connectivity that is not available to all Users, as all market participants that contract with the relevant market or content provider may receive access or connectivity. In this way, the proposed changes would enhance competition by helping Users tailor their Access and Connectivity to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

Similarly, the Exchange believes that providing VCCs between Users does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because providing VCCs satisfies User demand for an alternative to cross connects.

The Exchange believes that revising the Fee Schedules to provide a more detailed description of the Access and Connectivity available to Users would make such descriptions more accessible and transparent, thereby providing market participants with clarity as to what Access and Connectivity is available to them and what the related costs are, thereby enhancing competition by ensuring that all Users have access to the same information regarding Access and Connectivity.

Finally, the Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2016–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NYSEArca–2016–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2016–89, and should be submitted on or before September 16, 2016.

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[45] 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20455 Filed 8–25–16; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78632; File No. SR–BatsBZX–2016–50]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22, Data Products, To Adopt a New Market Data Product Known as BZX Summary Depth

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22 to adopt a new market data product known as BZX Summary Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.22 to adopt a new market data product known as BZX Summary Depth. BZX Summary Depth would be a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System[5] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. BZX Summary Depth also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange will disseminate the aggregate Best Bid and Offer ("BBO") and last sale information through BZX Summary Depth no earlier than it provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The Market Status message will reflect a change in the status of the Exchange. For example, the Market Status message would indicate whether the Exchange is experiencing a systems issue or disruption resulting in quotation or trade information not currently being disseminated as part of the aggregated BBO. The Market Status message will also indicate when Exchange has resolved a systems issue or disruption and is properly reflecting the status of the aggregated BBO. The Trade Break message will indicate when an execution is broken in accordance with Exchange rules.[6] The Trading Status message will indicate the current trading status of a security on the Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO ("Short Sale Circuit Breaker"),[7] or when the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

The Exchange intends to offer BZX Summary Depth as of January 3, 2017. Prior to January 3, 2017, the Exchange will file a separate rule change with the Commission proposing fees to be charged for BZX Summary Depth.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of BZX Summary Depth. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in BZX Summary Depth.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] "System" is defined as the "the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[6] *See, e.g.,* Exchange Rule 11.17, Clearly Erroneous Executions.

[7] 17 CFR 242.200(g); 17 CFR 242.201.

[8] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are Bats EDGA Exchange, Inc., ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), and Bats BZX Exchange, Inc. ("BZX") ("collectively, the "Bats Exchanges").

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[11] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. BZX Summary Depth would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, BZX Summary Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the New York Stock Exchange, Inc. ("NYSE") and the Nasdaq Stock Market LLC ("Nasdaq").[14] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[16] The Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by the NYSE and Nasdaq.[17] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section

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[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) ("Regulation NMS Adopting Release").

[14] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView as a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 5, 2016) (providing real-time view of the NYSE limit order book including the aggregated size at each price level). *See* Securities Exchange Act Release Nos. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR–NASD–2002–33) (order approving fees for Nasdaq TotalView); *and* 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (order approving fees for NYSE OpenBook).

[15] *See* Regulation NMS Adopting Release, *supra* note 13.

[16] The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). *See* Exchange Rule 11.22(i). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed BZX Summary Depth Feed, as well as the summarized depth feeds to be proposed by BYX, EDGA, and EDGX to create a competing product to the Bats One Feed. *Supra* note 8. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. *See* Bats One Approval Order. While the proposed BZX Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[17] *See supra* note 14.

19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsBZX–2016–50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBZX–2016–50. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBZX–2016–50, and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20459 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

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[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78630; File No. SR–BatsEDGX–2016–46]

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 21.8, Order Display and Book Processing

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 17, 2016, Bats EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to authorize the Exchange's equity options platform ("EDGX Options") to amend Rule 21.8 (Order Display and Book Processing).

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Rule 21.8 (Order Display and Book Processing), which sets forth the priority and order allocation rules applicable to EDGX Options. Rule 21.8 also describes the general priority rules for EDGX Options, including that quotes and orders are prioritized by price and then on a pro-rata basis according to size as well as various priority overlays applicable to the pro-rata allocation method. Specifically, Rule 21.8(g) (Primary Market Maker Participation Entitlements) allows for an exception to the pro-rata basis in cases of small size orders,[5] where Primary Market Makers are allocated the full order amount if they have priority quotes at the NBBO. When the Exchange originally proposed rules for EDGX Options, the Exchange proposed to extend the small size order exception to Directed Market Makers as well. This aspect of the Exchange's Rules was eliminated prior to approval of rules for EDGX Options.[6] However, there is one remaining reference to Directed Market Makers in Rule 21.8(g)(2), which describes the Exchange's monitoring of the small size order exception. Because the small size order exception is limited to Primary Makers, the Exchange proposes to eliminate reference to Directed Market Makers in Rule 21.8(g)(2). This amendment will align the Exchange with other option exchanges,[7] and will ensure internal consistency of the Exchange's rulebook, which has been previously amended to delete the proposed rule granting Directed Market Makers participation entitlements to trade against small size orders.[8]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Small size orders are defined as five or fewer contracts. *See* Exchange Rule 21.8(g)(2).

[6] *See* Securities Exchange Act Release No. 75650 (August 7, 2015), 80 FR 48600 (August 13, 2015) (SR–EDGX–2015–18) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and in particular, with the requirements of section 6(b) of the Act.[9] Specifically, the proposal is consistent with section 6(b)(5) of the Act[10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The amended rule will remove reference to Directed Market Makers in the context of the small size order exception. Thus, this amendment will align the Exchange with other options exchanges,[11] and will ensure internal consistency of the Exchange's rulebook, which has been previously amended to delete the proposed rule granting Directed Market Makers participation entitlements to trade against small size orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and in particular, with the requirements of section 6(b) of the Act.[12] Specifically, the proposal is consistent with section 6(b)(5) of the Act[13] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The amended rule will remove reference to Directed Market Makers in the context of the small size order exception. Thus, this amendment will align the Exchange with other options exchanges,[14] and will ensure internal consistency of the Exchange's rulebook, which has been previously amended to delete the proposed rule granting Directed Market Makers participation entitlements to trade against small size orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay. The Exchange states that the rule change proposed herein is a minor change to ensure internal consistency of the Exchange's rulebook. Further, the Exchange states that the proposed change is based on an existing rule of another options exchange[19] and does not raise any new policy issues.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as the proposed rule change is a non-substantive change and will promote internal consistency of the Exchange's rulebook and avoid potential confusion as to the application of the Exchange's rules. Therefore, the Commission designates the proposed rule change to be operative as of the date of filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGX–2016–46 on the subject line.

Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 Thereto, To Establish Rules Governing the Trading of Options on the EDGX Options Market).

[7] *See, e.g.,* BX Options, chapter VI, section 10(1)(C)(2), "Orders for 5 contracts or fewer shall be allocated to the LMM. The Exchange will review this provision quarterly and will maintain the small order size at a level that will not allow orders of 5 contracts or less executed by the LMM to account for more than 40% of the volume executed on the Exchange. This provision shall not apply if the order of 5 contracts or fewer is directed to a DMM who is quoting at or better than the NBBO."

[8] *See supra* note 6.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 7.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See supra* note 7.

[15] 15 U.S.C. 78s(b)(3)(a).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] *See supra* note 7.

[20] For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsEDGX–2016–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGX–2016–46 and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20457 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

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[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78631; File No. SR–BatsBYX–2016–21]

Self-Regulatory Organizations; Bats BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.22, Data Products, To Adopt a New Market Data Product Known as BYX Summary Depth

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2016, Bats BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 11.22 to adopt a new market data product known as BYX Summary Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.22 to adopt a new market data product known as BYX Summary Depth.[5] BYX Summary Depth would be a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System[6] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association ("CTA") Plan or the Nasdaq/UTP Plan. BYX Summary Depth also contains the individual last sale information, Market Status, Retail Liquidity Identifier, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange will disseminate the aggregate Best Bid and Offer ("BBO") and last sale information through BYX Summary Depth no earlier than it provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The Market Status message will reflect a change in the status of the Exchange. For example, the Market Status message would indicate whether the Exchange is experiencing a systems issue or disruption resulting in quotation or trade information not currently being disseminated as part of the aggregated BBO. The Market Status message will also indicate when Exchange has resolved a systems issue or disruption and is properly reflecting the status of the aggregated BBO. The Retail Liquidity Identifier indicator message will be disseminated pursuant to the Exchange's Retail Price Improvement ("RPI") Program.[7] The

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Currently, the paragraphs within Rule 11.22 skip from paragraph (i) to paragraph (k). The Exchange now proposes to renumber current paragraph (k) to Rule 11.22 to as paragraph (j) to ensure the paragraphs within the rule are consecutively numbered.

[6] "System" is defined as the "the electronic communications and trading facility designated by the Board through which securities orders of Users Are consolidated for ranking, execution and, when applicable, routing away." *See* Exchange Rule 1.5(aa).

[7] For a description of the RPI Program, *see* BYX Rule 11.24. *See also* Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR–BYX–2012–019)

Retail Liquidity Identifier indicates when RPI interest priced at least $0.001 better than BYX's Protected Bid or Protected Offer for a particular security is available. The Exchange proposes to disseminate the Retail Liquidity Indicator via the BYX Summary Feed in the same manner as it is currently disseminated through consolidated data streams (*i.e.*, pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan, or CTA/CQ, for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities) as well as through other proprietary data feeds. The Retail Liquidity Identifier will reflect the symbol and the side (buy or sell) of the RPI interest, but does not include the price or size of the RPI interest. In particular, like CQ and UTP quoting outputs, the BYX Summary Feed will include a field for codes related to the Retail Price Improvement Identifier. The codes indicate RPI interest that is priced better than Exchange's Protected Bid or Protected Offer by at least the minimum level of price improvement required by the Program. The Trade Break message will indicate when an execution is broken in accordance with Exchange rules.[8] The Trading Status message will indicate the current trading status of a security on the Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO ("Short Sale Circuit Breaker"),[9] or when the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

The Exchange intends to offer BYX Summary Depth as of January 3, 2017. Prior to January 3, 2017, the Exchange will file a separate rule change with the Commission proposing fees to be charged for BYX Summary Depth.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of BYX Summary Depth. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in BYX Summary Depth.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act[13] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[14] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. BYX Summary Depth would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[15]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, BYX Summary Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the New York Stock Exchange, Inc. ("NYSE") and the Nasdaq Stock Market LLC ("Nasdaq").[16] The provision of new options for investors to receive market

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(Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement Program); Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (August 31, 2012) (SR–BYX–2012–019) (Notice of Filing of Proposed Rule Change to Adopt a Retail Price Improvement Program).

[8] *See, e.g.*, Exchange Rule 11.17, Clearly Erroneous Executions.

[9] 17 CFR 242.200(g); 17 CFR 242.201.

[10] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are Bats EDGA Exchange, Inc., ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), and Bats BZX Exchange, Inc. ("BZX") (collectively, the "Bats Exchanges").

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78k–1.

[14] *See* 17 CFR 242.603.

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) ("Regulation NMS Adopting Release").

[16] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView as a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 5, 2016) (providing real-time view of the NYSE limit order book including the aggregated size at each price level). *See* Securities Exchange Act Release Nos. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR–NASD–2002–33) (order approving fees for Nasdaq TotalView); *and* 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (order approving fees for NYSE OpenBook).

data was a primary goal of the market data amendments adopted by Regulation NMS.[17]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[18] The Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by the NYSE and Nasdaq.[19] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–BatsBYX–2016–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BatsBYX–2016–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsBYX–2016–21, and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20458 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

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[17] *See* Regulation NMS Adopting Release, *supra* note 14.

[18] The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). *See* Exchange Rule 11.22(i). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed BYX Summary Depth Feed, as well as the summarized depth feeds to be proposed by BZX, EDGA, and EDGX to create a competing product to the Bats One Feed. *Supra* note 10. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. *See* Bats One Approval Order. While the proposed BYX Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[19] *See supra* note 16.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78636; File No. SR–BatsEDGA–2016–19]

Self-Regulatory Organizations; Bats EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 13.8, EDGA Book Feeds, To Adopt a New Market Data Product Known as EDGA Summary Depth

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2016, Bats EDGA Exchange, Inc. (the "Exchange" or "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial'' proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Rule 13.8 to adopt a new market data product known as EDGA Summary Depth.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 13.8 to adopt a new market data product known as EDGA Summary Depth. EDGA Summary Depth would be a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System[5] for up to five (5) price levels for securities traded on the Exchange and for which the Exchange reports quotes under the Consolidated Tape Association (''CTA'') Plan or the Nasdaq/UTP Plan. EDGA Summary Depth also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages. The individual last sale information will include the price, size, and time of execution. The last sale message will also include the cumulative number of shares executed on the Exchange for that trading day. The Exchange will disseminate the aggregate Best Bid and Offer (''BBO'') and last sale information through EDGA Summary Depth no earlier than it provides its BBO and last sale information to the processors under the CTA Plan or the Nasdaq/UTP Plan.

The Market Status message will reflect a change in the status of the Exchange. For example, the Market Status message would indicate whether the Exchange is experiencing a systems issue or disruption resulting in quotation or trade information not currently being disseminated as part of the aggregated BBO. The Market Status message will also indicate when Exchange has resolved a systems issue or disruption and is properly reflecting the status of the aggregated BBO. The Trade Break message will indicate when an execution is broken in accordance with Exchange rules.[6] The Trading Status message will indicate the current trading status of a security on the Exchange. For example, a Trading Status message will be sent when a short sale price restriction is in effect pursuant to Rule 201 of Regulation SHO (''Short Sale Circuit Breaker''),[7] or when the security is subject to a trading halt, suspension or pause declared by the listing market. A Trading Status message will be sent whenever a security's trading status changes.

The Exchange intends to offer EDGA Summary Depth as of January 3, 2017. Prior to January 3, 2017, the Exchange will file a separate rule change with the Commission proposing fees to be charged for EDGA Summary Depth.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. This proposal is in keeping with those principles in that it promotes increased transparency through the dissemination of EDGA Summary Depth. The Exchange also believes this proposal is consistent with section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with an alternative for receiving market data as requested by market data vendors and purchasers that expressed an interest in exchange-only data for instances where consolidated data is no longer required to be purchased and displayed. The proposed rule change would benefit investors by facilitating their prompt access to real-time depth-of-book information contained in EDGA Summary Depth.

The Exchange also believes that the proposed rule change is consistent with section 11(A) of the Act[11] in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability of information with respect to quotations for and transactions in securities to brokers, dealers, and investors. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. EDGA Summary Depth would be accessed and subscribed to on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, distributors and subscribers can discontinue their use at any time and for any reason.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the data products proposed herein are precisely the sort of market data products that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

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[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ''System'' is defined as the ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa).

[6] *See, e.g.*, Exchange Rule 11.15, Clearly Erroneous Executions.

[7] 17 CFR 242.200(g); 17 CFR 242.201.

[8] The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt rules and fees for the Book Viewer data feed with the Commission. The Exchange's affiliates are Bats EDGX Exchange, Inc., (''EDGX''), Bats BYX Exchange, Inc. (''BYX''), and Bats BZX Exchange, Inc. (''BZX'') (collectively, the ''Bats Exchanges'').

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[13]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history.

In addition, EDGA Summary Depth removes impediments to and perfects the mechanism of a free and open market and a national market system by providing investors with alternative market data and competing with similar market data products currently offered by the New York Stock Exchange, Inc. ("NYSE") and the Nasdaq Stock Market LLC ("Nasdaq").[14] The provision of new options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[15]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[16] The Exchange believes that the proposal will promote competition by enabling the Exchange to offer a market data product similar to that currently offered by the NYSE and Nasdaq.[17] Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6) thereunder.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BatsEDGA–2016–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR-BatsEDGA–2016–19. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BatsEDGA–2016–19, and should be submitted on or before September 16, 2016.

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[13] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (File No. S7–10–04) ("Regulation NMS Adopting Release").

[14] *See* Nasdaq Rule 7023(a)(1)(C) (describing Nasdaq TotalView as a depth-of-book data feed that includes all orders and quotes from all Nasdaq members displayed in the Nasdaq Market Center as well as the aggregate size of such orders and quotes at each price level in the execution functionality of the Nasdaq Market Center). *See* NYSE OpenBook *available at http://www.nyxdata.com/openbook* (last visited July 5, 2016) (providing real-time view of the NYSE limit order book including the aggregated size at each price level). *See* Securities Exchange Act Release Nos. 46843 (November 18, 2002), 67 FR 70471 (November 22, 2002) (SR–NASD–2002–33) (order approving fees for Nasdaq TotalView); *and* 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (SR–NYSE–2001–42) (order approving fees for NYSE OpenBook).

[15] *See* Regulation NMS Adopting Release, *supra* note 13.

[16] The Bats One Feed is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on each of the Bats Exchanges and for the Bats Exchanges report quotes under the CTA Plan or the Nasdaq/UTP Plan. The Bats One Feed also contains the individual last sale information for the Bats Exchanges (collectively with the aggregate BBO, the "Bats One Summary Feed"). In addition, the Bats One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Bats Exchanges for up to five (5) price levels ("Bats One Premium Feed"). *See* Exchange Rule 13.8(b). *See also* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (File Nos. SR–EDGX–2014–25; SR–EDGA–2014–25; SR–BATS–2014–055; SR–BYX–2014–030) (Notice of Amendments No. 2 and Order Granting Accelerated Approval to Proposed Rule Changes, as Modified by Amendments Nos. 1 and 2, to Establish a New Market Data Product called the Bats One Feed) ("Bats One Approval Order"). The Exchange uses the following data feeds to create the Bats One Feed, each of which are available to vendors: EDGX Depth, EDGA Depth, BYX PITCH Feed, and the BZX PITCH Feed. The Exchange notes that a vendor could utilize the proposed EDGA Summary Depth Feed, as well as the summarized depth feeds to be proposed by BYX, BZX, and EDGX to create a competing product to the Bats One Feed. *Supra* note 8. The Exchange represents that a competing vendor could obtain these data feeds from each Bats Exchange on the same latency basis as the system that performs the aggregation and consolidation of the Bats One Feed. *See* Bats One Approval Order. While the proposed EDGA Summary Depth Feed does not contain the symbol summary or consolidated volume data included in the Bats One Feed, a vendor could include this information in a competing product as this information is easily derivable from the proposed feeds or can be obtained from the securities information processors on the same terms as the Exchange.

[17] *See supra* note 14.

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78634; File No. SR–NASDAQ–2016–113]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Options Pricing

August 22, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 9, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend chapter XV, entitled "Options Pricing," at section 2, which governs pricing for Exchange members using the NASDAQ Options Market LLC ("NOM"), the Exchange's facility for executing and routing standardized equity and index options. The Exchange proposes to amend certain Penny Pilot Options[3] pricing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NOM pricing at chapter XV, section 2(1) to increase the Customer[4] or Professional[5] Penny Pilot Options Fee for Removing Liquidity in SPY Options.[6] The proposed change is discussed below.

Change 1—Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange currently assesses Customers, Professionals, Firms,[7] Non-NOM Market Makers,[8] NOM Market Makers,[9] and Broker-Dealers[10] a $0.50 per contract Penny Pilot Options Fee for Removing Liquidity in all NOM Penny Pilot Options, except SPY options. Today, the Exchange assesses a Customer or Professional that removes liquidity in SPY options a Penny Pilot Options Fee for Removing Liquidity of $0.47 per contract.[11] The Exchange proposes to amend note "3" of chapter XV, section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from $0.47 to $0.48 per contract. While the Exchange is proposing to increase this fee, the Exchange believes that the lower fee, as compared to $0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[13] in general, and furthers the objectives of sections 6(b)(4) and 6(b)(5) of the Act,[14] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and was last extended in 2016. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); and 78037 (June 10, 2016), 81 FR 39299 (June 16, 2016) (SR–NASDAQ–2016–052) (notice of filing and immediate effectiveness extending the Penny Pilot through December 31, 2016). All Penny Pilot Options listed on the Exchange can be found at *http://www.nasdaqtrader.com/MicroNews.aspx?id=OTA2016-15.*

[4] The term "Customer" or ("C") applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation which is not for the account of broker or dealer or for the account of a "Professional" (as that term is defined in Chapter I, Section 1(a)(48)).

[5] The term "Professional" or ("P") means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[6] Options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund ("ETF"), which is designed to track the performance of the S&P 500 Index.

[7] The term "Firm" or ("F") applies to any transaction that is identified by a Participant for clearing in the Firm range at The Options Clearing Corporation.

[8] The term "Non-NOM Market Maker" or ("O") is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[9] The term "NOM Market Maker" or ("M") is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[10] The term "Broker-Dealer" or ("B") applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[11] Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers are assessed a $0.50 per contract Penny Pilot Options Fee for Removing Liquidity in SPY options, similar to other Penny Pilot Options.

[12] SPY options are the largest volume Penny Pilot Options traded on the Exchange.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4) and (5).

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[15]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission*[16] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[17] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost."[18]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . ."[19] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Change 1—Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange's proposal to amend note "3" of chapter XV, section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY from $0.47 to $0.48 per contract is reasonable because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. The lower fee of $0.48 in SPY, as compared to $0.50 per contract in other Penny Pilot Options, will continue to incentivize Participants to send Customer and Professional order flow in SPY.

The Exchange's proposal to amend note "3" of chapter XV, section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from $0.47 to $0.48 per contract is equitable and not unfairly discriminatory because the Customer and Professional Penny Pilot Options Fee for Removing Liquidity continues to be lower for SPY as compared to other Penny Pilot Options. This lower fee for these market participants is equitable and not unfairly discriminatory because Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that offering a lower fee to Professionals is equitable and not unfairly discriminatory because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to ". . . bring additional revenue to the Exchange."[20] The Exchange noted in the Professional Filing that it believes ". . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs."[21] The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The proposed fee changes are competitive and do not impose a burden on inter-market competition. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

Change 1—Penny Pilot Options: Change Fee for Removing Customer and Professional Liquidity in SPY Options

The Exchange's proposal to amend note "3" of chapter XV, section 2(1) to increase the Customer or Professional Penny Pilot Options Fee for Removing Liquidity in SPY options from $0.47 to $0.48 per contract does not create an undue burden on intra-market competition, rather the proposal will incentivize market participants to send additional SPY order flow to NOM, because Participants sending Customer and Professional order flow will continued to be charged a lower rate of $0.48 in SPY as compared to $0.50 per contract in other Penny Pilot Options. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that offering a lower fee to Professionals does not create an undue burden on intra-market competition because it serves to attract more liquidity to NOM to the benefit of other market participants. By offering Professionals, as well as Customers, lower fees, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. Further, the Exchange initially established Professional pricing in order to ". . . bring additional revenue to the Exchange." [22] The Exchange noted in the Professional Filing that it believes ". . . that the increased revenue from the proposal would assist the Exchange to recoup fixed costs." [23] The Exchange does not believe that providing Professionals with the opportunity to obtain lower remove fee in SPY, equivalent to that of a Customer, creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers.

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[15] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

[16] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[17] *See NetCoalition*, at 534–535.

[18] *Id.* at 537.

[19] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[20] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[21] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–113 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–113. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NASDAQ–2016–113* and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20451 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78633; File No. SR–NYSEArca–2016–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges To Eliminate the Listing Fee in Connection With Exchange Listing of Certain Exchange Traded Products

August 22, 2016.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on August 8, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to [sic] the Exchange's Schedule of Fees and Charges ("Fee Schedule") to eliminate the Listing Fee in connection with Exchange listing of certain Exchange Traded Products, effective August 8,

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[22] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[23] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

[24] 15 U.S.C. 78s(b)(3)(A)(ii).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

2016. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Exchange's Schedule of Fees and Charges ("Schedule") to eliminate the Listing Fee applicable to certain issues of Managed Fund Shares listed pursuant to NYSE Arca Equities Rule 8.600, effective August 8, 2016, as described below.

Currently the Exchange's Schedule of Fees and Charges ("Schedule") does not impose a "Listing Fee" for the following Exchange-Traded Products ("ETPs")[4] listed on the Exchange pursuant to Rule 19b–4(e) under the Act, and for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission[5]: Investment Company Units; Portfolio Depositary Receipts; and Currency Trust Shares (collectively, "Generically-Listed Exchange Traded Products").[6]

Other ETPs—specifically, Trust Issued Receipts,[7] Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Trust Units, and non–generically–listed Investment Company Units, Portfolio Depositary Receipts and Currency Trust Shares—are subject to a Listing Fee of $7,500.[8] Under Item 5b of the Schedule, Managed Fund Shares and Managed Trust Securities are subject to a Listing Fee of $10,000.

The Commission has recently approved an Exchange proposed rule change that permits generic listing of Managed Fund Shares pursuant to Rule 19b–4(e) under the Act.[9] The Exchange proposes to amend Item 5a of the Schedule to include Managed Fund Shares under the term "Generically-Listed Exchange Traded Products". In addition, the Exchange proposes to delete Managed Fund Shares from Item 5b of the Schedule. Thus, an issue of Managed Fund Shares that is a "Generically-Listed Exchange Traded Product" would incur no charge to list on the Exchange, and an issue of Managed Fund Shares for which a proposed rule change under the Act is required would be subject to a Listing Fee of $7,500. Issues of Managed Trust Securities would continue to be subject to a Listing Fee of $10,000.

The Exchange believes eliminating the Listing Fee for generically-listed Managed Fund Shares would help correlate the Listing Fee applicable to such issues to the resources required to list such issues on the Exchange. The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the additional time and resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings. Application of a Listing Fee for Managed Trust Securities is appropriate because the Exchange generally incurs increased costs in connection with the rule-making process, listing administration process, issuer services, and consultative legal services where a proposed rule change pursuant to Section 19(b) of the Act is required to be filed with the Commission.

Annual Fees set forth in the Schedule applicable to ETPs would remain unchanged.

Notwithstanding the elimination of the Listing Fee applicable to generically-listed Managed Fund Shares, as well as the decrease in the Listing Fee for non-generically-listed Managed Fund Shares, as described above, the Exchange will continue to be able to fund its regulatory obligations.

2. Statutory Basis

NYSE Arca believes that the proposal is consistent with Section 6(b)[10] of the Act, in general, and Section 6(b)(4)[11] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its issuers and other persons using its facilities. In addition, the Exchange believes the proposal is consistent with the requirement under Section 6(b)(5)[12] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed elimination of the Listing Fee for Managed Fund Shares that are Generically-Listed ETPs, as well as the decrease in the Listing Fee for non-generically-listed Managed Fund Shares, as described above, is equitable and does not unfairly discriminate between issuers because it would apply uniformly to all such issues listed generically under Exchange rules. The Exchange believes eliminating the Listing Fee for such Managed Fund Shares, decreasing the Listing Fee for non-generically-listed Managed Fund Shares, as described above, and continuing to impose Listing Fees for ETPs that are not generically listed is reasonable given the additional resources required by the Exchange in connection with ETPs requiring a proposed rule change pursuant to Section 19(b). The Exchange believes it is appropriate to continue to charge a Listing Fee for ETPs for which a proposed rule change pursuant to Section 19(b) of the Act is required to be filed because of the significant additional extensive time, legal and business resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

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[4] For the purposes of the Schedule, the term "Exchange Traded Products" includes securities described in NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units); 8.100 (Portfolio Depositary Receipts); 8.200 (Trust Issued Receipts); 8.201 (Commodity-Based Trust Shares); 8.202 (Currency Trust Shares); 8.203 (Commodity Index Trust Shares); 8.204 (Commodity Futures Trust Shares); 8.300 (Partnership Units); 8.500 (Trust Units); 8.600 (Managed Fund Shares), and 8.700 (Managed Trust Securities).

[5] Exchange rules applicable to listing of certain ETPs provide for listing such products pursuant to Rule 19b–4(e) under the Act if they satisfy all criteria—referred to as "generic" listing criteria—in the applicable Exchange ETP rule. If an ETP does not satisfy all applicable generic criteria, the Commission must approve or issue a notice of effectiveness with respect to a proposed rule change filed by the Exchange pursuant to Section 19(b) of the Act prior to Exchange listing of such ETP.

[6] *See* Securities Exchange Act Release No. 77883 (May 23, 2016), 81 FR 33720 (May 27, 2016) (SR–NYSEArca–2016–69) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the Exchange's Schedule of Fees and Charges to Eliminate the Listing Fee in Connection with Exchange Listing of Certain Exchange Traded Products).

[7] Commentary .01 to NYSE Arca Equities Rule 8.200 provides generic standards for listing Trust Issued Receipts pursuant to Rule 19b–4(e) under the Act. However, the Exchange does not currently intend to list Trust Issued Receipts under Commentary .01, but instead lists Trust Issued Receipts under Commentary .02 to NYSE Arca Equities Rule 8.200, which does not provide generic standards for listing pursuant to Rule 19b–4(e) under the Act. Before listing any Trust Issued Receipts pursuant to Commentary .01 to NYSE Arca Equities Rule 8.200, the Exchange will first file a proposed rule change with respect to the Listing Fee applicable to any such generically-listed securities.

[8] Exchange rules applicable to Trust Issued Receipts (Commentary .02 to NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (NYSE Arca Equities Rule 8.201), Commodity Index Trust Shares (NYSE Arca Equities Rule 8.203), Commodity Futures Trust Shares (NYSE Arca Equities Rule 8.204), Partnership Units (NYSE Arca Equities Rule 8.300), and Trust Units (NYSE Arca Equities Rule 8.500) do not provide for listing pursuant to Rule 19b–4(e) under the Act.

[9] *See* Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes the proposed rule change would promote competition because it will eliminate the Listing Fee for generically-listed issues of Managed Fund Shares and will therefore encourage issuers to develop and list additional such issues on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2016–114 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–114. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–114 and should be submitted on or before September 16, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–20460 Filed 8–25–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14811 and #14812]

Louisiana Disaster Number LA–00065

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4277–DR), dated 08/14/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 and continuing.

Effective Date: 08/16/2016.

Physical Loan Application Deadline Date: 10/13/2016.

EIDL Loan Application Deadline Date: 05/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 08/14/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):
  Avoyelles, Evangeline, Iberville, Jefferson Davis, Saint Martin, Saint Tammany, Washington, West Feliciana.
Contiguous Counties: (Economic Injury Loans Only):
  Louisiana: Allen, Beauregard, Calcasieu, Catahoula, La Salle, Orleans, Rapides.
  Mississippi: Hancock, Marion, Pearl River, Walthall.

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–20465 Filed 8–25–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14811 and #14812]

Louisiana Disaster Number LA–00065

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4277–DR), dated 08/14/2016.

Incident: Severe Storms and Flooding.

Incident Period: 08/11/2016 and continuing.

Effective Date: 08/16/2016.

Physical Loan Application Deadline Date: 10/13/2016.

EIDL Loan Application Deadline Date: 05/15/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Louisiana, dated 08/14/2016 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Acadia, Ascension, East Feliciana, Iberia, Lafayette, Pointe Coupee, Saint Landry, Vermilion.

Contiguous Counties: (Economic Injury Loans Only):

Louisiana: Assumption, Avoyelles, Cameron, Concordia, Evangeline, Jefferson Davis, Saint James, Saint Martin, Saint Mary, West Feliciana.

Mississippi: Wilkinson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–20468 Filed 8–25–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs Meeting Notice

AGENCY: U.S. Small Business Administration

ACTION: Notice of open Federal Advisory Committee Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Advisory Committee on Veterans Business Affairs. The meeting is open to the public.

DATES: Wednesday, September 14, 2016, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: Eisenhower Conference Room B on the concourse level, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs (ACVBA). The ACVBA serves as an independent source of advice and policy recommendation to the Administrator of the U.S. Small Business Administration. The purpose of this meeting is to discuss the formation and growth of small business concerns owned and controlled by veterans and service disabled veterans, to focus on strategic planning, and provide updates on past and current events.

Additional Information: Advance notice of attendance is requested. Notice of attendance, comments, and special accommodation requests should be emailed to the Office of Veterans Business Development at *vetstaskforce@sba.gov* no later than September 9, 2016. During the meeting, public comments will be limited to five minutes to accommodate as many participants as possible. For more information on veteran owned small business programs, please visit *www.sba.gov/vets.*

Dated: August 17, 2016.

Miguel J. L'Heureux,

SBA Committee Management Officer.

[FR Doc. 2016–20464 Filed 8–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 9691]

30-Day Notice of Proposed Information Collection: U.S. Passport Renewal Application for Eligible Individuals

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to September 26, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, by mail to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L/LA 44132 Mercure Cir, P.O. Box 1227, Sterling, VA 20166–1227, by phone at (202) 485–6373, or by email at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* U.S. Passport Renewal Application for Eligible Individuals.
- *OMB Control Number:* 1405–0020.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L/LA).
- *Form Number:* DS–82.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 7,261,667.
- *Estimated Number of Responses:* 7,261,667.
- *Average Time per Response:* 40 minutes.

- *Total Estimated Burden Time:* 4,841,111 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information collected on the DS–82 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

DS–82 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a *et seq.* and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement, with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport by Mail are at 22 CFR 51.20 through 51.21.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals who complete and submit the U.S. Passport Renewal Application. Passport applicants can either download the DS–82 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's previous U.S. passport.

U.S. citizens overseas may download the DS–82 from the Internet or obtain one from the nearest U.S. embassy or consulate, along with the procedures to be followed when applying overseas.

Additional Information

The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with 22 U.S.C. 2714a(f) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number. These requirements and the underlying legal authorities are further described on page 3 of the instruction titled "Federal Tax Law" which has also been amended to include a reference to 22 U.S.C. 2714a(f).

Additionally, the proposed renewal of form DS–82 includes updated instruction regarding the eyeglass policy change, which prohibits applicants from wearing eyeglasses in passport photographs, unless the applicant presents a signed statement from a doctor demonstrating that the glasses must be worn due to medical reasons. The form also states that passport photos may include hats or head coverings only when they are worn continuously as part of recognized, traditional religious attire, or when the hat or head covering is worn for medical purposes as stated by a doctor in a signed statement.

Dated: August 12, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–20522 Filed 8–25–16; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 9690]

Review of the Designation as a Foreign Terrorist Organization of Jemaah Islamiya (and Other Aliases)

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) ("INA"), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: August 18, 2016.

John F. Kerry,

Secretary of State.

[FR Doc. 2016–20523 Filed 8–25–16; 8:45 am]

BILLING CODE 4710–10–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36056]

CSX Transportation, Inc.—Corporate Family Merger Exemption—The Three Rivers Railway Company

CSX Transportation, Inc. (CSXT) and The Three Rivers Railway Company (TRRC) (collectively, Applicants) have jointly filed a verified notice of exemption under 49 CFR 1180.2(d)(3) for a corporate family transaction. CSXT is a Class I rail carrier that directly controls and operates TRRC.[1] TRRC is a Class III wholly owned subsidiary of CSXT.

Under the proposed transaction, TRRC will be merged with and into CSXT with CSXT being the surviving corporation. Applicants state that the purpose of the transaction is to simplify the corporate structure and reduce overhead costs and duplication, by eliminating one corporation while retaining the same assets to serve customers. According to Applicants, CSXT will also obtain certain other savings as a result of this transaction. Applicants state that the proposed merger of TRRC into CSXT does not contain any interchange commitments.

Unless stayed, the exemption will be effective on September 11, 2016 (30 days after the verified notice was filed). Applicants state that CSXT intends to merge TRRC into CSXT on or after that date.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). Applicants state that the transaction will not result in adverse changes in service levels, significant operational changes, or any change in the competitive balance with carriers outside the corporate family.

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[1] *See CSX Transp., Inc.—Continuance in Control Exemption—Three Rivers Ry.*, FD 32056 (ICC served Oct. 23, 1992).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. As a condition to the use of this exemption, any employees adversely affected by this transaction will be protected by the conditions set forth in *New York Dock Railway—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the exemption. Petitions for stay must be filed no later than September 2, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36056, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: August 23, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Marline Simeon,

Clearance Clerk.

[FR Doc. 2016–20528 Filed 8–25–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Government/Industry Aeronautical Charting Forum Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the bi-annual meeting of the Federal Aviation Administration (FAA) Aeronautical Charting Forum (ACF) to discuss informational content and design of aeronautical charts and related products, as well as instrument flight procedures development policy and design criteria.

DATES: The ACF is separated into two distinct groups. The Instrument Procedures Group (IPG) will meet October 25, 2016 from 8:30 a.m. to 5:00 p.m. The Charting Group (CG) will meet October 26 and 27, 2016 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be hosted by Pragmatics, Inc. Company at 1761 Business Center Drive, Reston, VA 20190.

FOR FURTHER INFORMATION CONTACT: For information relating to the Instrument Procedures Group, contact Thomas E. Schneider, FAA, Flight Procedures Standards Branch, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125; telephone: (405) 954–5852.

For information relating to the Charting Group, contact Valerie S. Watson, FAA, Aeronautical Information Services, Governance & Standards, AJV–553, 1305 East-West Highway, SSMC4, Station 3409, Silver Spring, MD 20910; telephone: (301) 427–5155.

SUPPLEMENTARY INFORMATION: Pursuant to § 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the FAA Aeronautical Charting Forum to be held from October 25 through October 27, 2016, from 8:30 a.m. to 5:00 p.m. at Pragmatics, Inc. Company, at their offices located at 1761 Business Center Drive, Reston, VA 20190.

The Instrument Procedures Group agenda will include briefings and discussions on recommendations regarding pilot procedures for instrument flight, as well as criteria, design, and developmental policy for instrument approach and departure procedures.

The Charting Group agenda will include briefings and discussions on recommendations regarding aeronautical charting specifications, flight information products, and new aeronautical charting and air traffic control initiatives. Attendance is open to the interested public, but will be limited to the space available.

Please note the following special security requirements for access to the Pragmatics, Inc. Corporation Headquarters. A picture I.D. is required of all U.S. citizens. All foreign national participants are required to have a passport. Additionally, not later than September 30, 2016, foreign national attendees must provide their name, country of citizenship, company/organization representing, and country of the company/organization. Send the information to: Steve VanCamp, Pragmatics, Inc., FAA, Aviation Safety—Flight Standards Service, AFS–420, 6500 South MacArthur Blvd., P.O. Box 25082, Oklahoma City, OK 73125 or via Email (preferred) to: *steve.ctr.vancamp@faa.gov.* Foreign nationals who do not provide the required information will not be allowed entrance—NO EXCEPTIONS.

The public must make arrangements by October 6, 2015, to present oral statements at the meeting. The public may present written statements and/or new agenda items to the committee by providing a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section not later than October 6, 2015. Public statements will only be considered if time permits.

Issued in Washington, DC, on August 22, 2016.

Valerie S. Watson,

Co-Chair, Aeronautical Charting Forum.

[FR Doc. 2016–20430 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the ARAC.

DATES: The meeting will be held on September 15, 2016, starting at 1:00 p.m. Eastern Daylight Savings Time. Arrange oral presentations by September 08, 2016.

ADDRESSES: The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, 10th floor, MacCracken Conference Room.

FOR FURTHER INFORMATION CONTACT: Nikeita Johnson, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–4977; fax (202) 267–5075; email *Nikeita.Johnson@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), we are giving notice of a meeting of the ARAC taking place on September 15, 2016, at the Federal Aviation

Administration, 800 Independence Avenue SW., Washington, DC 20591.

The Agenda includes:

1. Recommendation Report
   a. Aircraft Systems Information Security/Protection Working Group
2. Status Reports From Active Working Groups
   a. ARAC
   i. Air Traffic Controller Training Working Group
   ii. Rotorcraft Occupant Protection Working Group
   iii. Rotorcraft Bird Strike Working Group
   iv. Load Master Certification Working Group
   v. Airman Certification Systems Working Group
   b. Transport Airplane and Engine (TAE) Subcommittee
   i. Transport Airplane Metallic and Composite Structures Working Group—Transport Airplane Damage—Tolerance and Fatigue Evaluation
   ii. Flight Test Harmonization Working Group—Phase 2 Tasking
   iii. Transport Airplane Crashworthiness and Ditching Evaluation Working Group
   iv. Engine Harmonization Working Group—Engine Endurance Testing Requirements—Revision of Section 33.87
   v. Airworthiness Assurance Working Group
3. Status Report From the FAA

Attendance is open to the interested public but limited to the space available. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than September 08, 2016. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

The public must arrange by September 08, 2016 to present oral statements at the meeting. The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

If you are in need of assistance or require a reasonable accommodation for this meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on August 16, 2016.

Lirio Liu,

Designated Federal Officer, Aviation Rulemaking Advisory Committee.

[FR Doc. 2016–20433 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Availability of Noise Compatibility Program for Akron-Canton Airport, North Canton, Ohio

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its determination that the noise exposure maps submitted by the Akron-Canton Airport Authority for Akron-Canton Airport under the provisions of 49 U.S.C. 47501 et. Seq. (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150 (hereinafter referred to as "Part 150") are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Akron-Canton Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 18, 2017.

DATES: This notice is effective July 22, 2016, and is applicable July 22, 2016. The public comment period ends October 24, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Delaney, Community Planner, DET ADO 604, Federal Aviation Administration, Detroit Airports District Office, 11677 Wayne Road, Suite 107, Romulus, MI 48174. Telephone number: 734–229–2900. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Akron-Canton Airport are in compliance with applicable requirements of Part 150, effective July 22, 2016. Further, FAA is reviewing a proposed noise compatibility program for the airport which will be approved or disapproved on or before January 18, 2017. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

Akron-Canton Airport Authority submitted to the FAA on September 28, 2015 noise exposure maps, descriptions and other documentation that were produced during noise compatibility planning study conducted from 2012 through 2014. It was requested that the FAA review this material as the noise exposure maps, as described in section 47503 of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Akron-Canton Airport Authority. The specific documentation determined to constitute the noise exposure maps includes: Figure 36, Figure 37, and Chapter 5 of the Part 150 study document. The FAA has determined that these maps for Akron-Canton Airport are in compliance with applicable requirements. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix D of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished. Preliminary review of the submitted noise compatibility program for Akron-Canton Airport indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 18, 2017. A public hearing was held on September 17, 2014 at the Akron-Canton Airport Terminal Building, 2nd Floor.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses. Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities; will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Detroit Airports District Office, 11677 South Wayne Road, Ste. 107, Romulus, MI 48174

Akron-Canton Airport Authority, 5400 Lauby Road, North Canton, OH 44720

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Romulus, MI.

Dated: August 17, 2016.

Stephanie R. Swann,

Acting Manager, Detroit Airports District Office.

[FR Doc. 2016–20425 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Illinois

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, I–55 from I–355 to I–90/94 in Will, DuPage and Cook Counties, Illinois. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 23, 2017. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine A. Batey, Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4640, Email address: *Catherine.Batey@dot.gov.* The FHWA Illinois Division Office's normal business hours are 7:30 a.m. to 4:15 p.m. You may also contact Mr. John A. Fortmann, P.E., Illinois Department of Transportation, Region One Engineer, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. The Illinois Department of Transportation Region One's normal business hours are 8 a.m. to 4:15 p.m.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Illinois: Convert the existing median of I–55 to provide one additional managed lane in each direction from I–355 in Will County to I–90/94 in Cook County, a total project length of approximately 25 miles. The managed lane is proposed as tolled lane. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on April 27, 2016, the Finding of No Significant Impact (FONSI) issued on July 20, 2016; and in other documents in the FHWA administrative record. The EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Illinois Department of Transportation at the addresses provided above. The EA and FONSI and all other supporting documentation can be viewed and downloaded from the project Web site at *www.i-55managedlaneproject.org.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351] Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303 and 23 U.S.C. 138].
4. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act (AHPA) [16 U.S.C. 469–469(c)].
6. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Migratory Bird Treaty Act [16 U.S.C. 703–712].
7. *Wetlands and Water Resources:* Clean Water Act (Section 401 and 404) [33 U.S.C. 1251–1377]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988

Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: August 12, 2016.

Catherine A. Batey,

Division Administrator, Springfield, Illinois.

[FR Doc. 2016–20229 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0268]

Household Goods Consumer Protection: Application for Exemption; La Rosa Del Monte Express Inc. (LRDM)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that La Rosa Del Monte Express, Inc. (LRDM) has requested an exemption for its specialized "Small Residential Shipments" (SRS) from the consumer protection regulations for the transportation of household goods (HHG) in interstate commerce. LRDM requested that its SRS consisting of fewer than 10 items weighing less than 1,000 pounds total be exempted from the HHG regulations. LRDM claims that the need for the exemption is made clear by the statutory Limited Service Exclusion (LSE) for household goods motor carriers. LRDM believes that an SRS exemption is consistent with the purpose of the LSE.

DATES: Comments must be received on or before September 26, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2016–0268 using any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov*, including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Telephone: (614) 942–6477; Email: *MCPSD@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0268), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, "FMCSA–2016–0268" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

III. Legal Basis

Before operating for hire in interstate commerce, a motor carrier must obtain commercial registration under 49 U.S.C. 13902 and comply with the requirements of § 13902(a)(1). To provide transportation of HHG, a motor carrier must also comply with the requirements of § 13902(a)(2).

However, under 49 U.S.C. 13541(a), the Secretary of Transportation "shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part [part B of subtitle IV of title 49, United States Code, *i.e.*, 49 U.S.C. chapters 131–149], or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary . . . finds that the application of that provision—(1) is not necessary to carry out the transportation policy of section 13101; (2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and (3) is in the public interest."

Nonetheless, "The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damages, insurance, [or] safety fitness . . ." [49 U.S.C. 13541(e)(1)].

The Secretary's authority to enforce 49 U.S.C. 13902 and 13541 have been delegated to FMCSA by 49 CFR 1.87(a)(5) and 1.87(a)(3), respectively. This notice seeks to clarify the exemption sought by LRDM, in light of the limitations set forth in § 13541(e)(1).

IV. Background

A motor carrier engaged in the interstate transportation of household goods must follow the regulations in 49 CFR part 375. The term "household goods motor carrier" is defined in section 375.103 as a motor carrier that, in the ordinary course of business of providing transportation of household goods, offers some or all of the following additional services: binding and nonbinding estimates; inventorying; protective packing and unpacking of items at personal residences; and loading and unloading at personal residences. However, the term HHG motor carrier excludes any motor carrier providing transportation of HHGs in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier). This is the LSE provision.

V. Request for Exemption

LRDM (US DOT # 25982) is a minority-owned motor carrier with its principal place of business located in Bronx, New York. According to LRDM, for almost 50 years this company has been a leader in providing interstate household goods moving and storage services for primarily minority communities from and between New York, Florida, Connecticut, Illinois, Massachusetts, Pennsylvania, Puerto Rico, and the Dominican Republic.

According to LRDM, in the past several years there has been a need in communities served by LRDM for an efficient, low-cost, no-frills shipment service for SRS consisting primarily of fewer than 10 items weighing a total of no more than 1,000 pounds. Such items include bicycles, refrigerators, washer/dryers and other similar goods. In response to this need, LRDM offers an SRS service that it says combines the efficiency and economy of freight with the safety and professional service of a traditional HHG move.

LRDM contends that the HHG regulations hinder its efforts to meet the needs of the communities it serves. The regulations do not exempt SRS under the Limited Service Exclusion [1] (LSE) because LRDM takes the time and effort to load and unload these small shipments for its customers. As a result the regulations classify these shipments as large HHG moves.

LRDM seeks the ability to offer its customers an option to ship a limited number of small items at a flat rate that its customers can afford, free from extra costs and burdens associated with HHG regulations. LRDM is requesting that its specialized service be exempt from the HHG requirements under 49 CFR part 375. LRDM asserts that its SRS warrant an exemption from the application of part 375 because such an exemption is in the public interest. It claims that the exemption would further support DOT's transportation policy goals by promoting safe, economical, and efficient transportation by allowing a variety of quality and price options to the public.

To LRDM's knowledge no other carrier/mover, ground, freight, or otherwise, offers a similar service. These shipments are unique and in a class of their own; are too large and/or heavy for ground transportation; and too small to be economical or affordable to be shipped as freight or through a portable storage container covered under the LSE.

LRDM explains that its customers cannot turn to traditional ground carriers because the SRS shipments far exceed those services' 150 pound maximum weight for any one parcel. Nor can its customers turn to less-than-truckload (LTL) freight services which are prohibitively expensive due to mileage and other freight charges. LTL carriers also require sophisticated packing with items securely fastened to a pallet or skid.

LRDM advises that customers cannot turn to the portable storage container service options. According to LRDM, those services, although excluded from HHG moving regulations under the LSE, are not made for SRS and are prohibitively expensive. For example, the cost of shipping an average sized refrigerator from New York to Miami would cost between $600–$1,000 by traditional freight service (not including the cost and time to properly pack and secure the refrigerator on a pallet) and over $1,800 by a portable storage container service. However, in comparison, if LRDM was not required to burden its customers with the "excessive costs" and "unreasonable forms" associated with HHG regulations intended for much larger moves, LRDM would be able to offer shipment of the same merchandise for a flat fee in the range of $125–$500.

LRDM contends that the intent of the LSE was to give consumers "access to low-cost transportation services as an alternative to traditional, full-service, moving companies." The intent of its exemption application is exactly the same; to give consumers access to an efficient and affordable shipping option for SRS.

LRDM states that the HHG regulations were not meant to regulate SRS. LRDM believes the HHG regulations, as they are currently applied to smaller shipments, are unnecessary and unreasonable. Rather than being a means of protecting the public from carrier abuses, HHG regulations burden LRDM's customers with excessive costs and unreasonably lengthy and confusing forms that undermine DOT's transportation policy goals.

LRDM advises that the forms require LRDM to spend time and resources assisting its customers traverse the maze of paperwork required by the HHG regulations no matter how small the shipment. These resources could be used to make SRS shipments more affordable and more efficient.

A copy of LRDM's application for the exemption is available for review in the docket for this notice.

Issued on: August 18, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–20498 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–EX–P

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[1] The LSE is a statutory provision that pertains to the definition of "household goods motor carrier." Through the LSE, Congress specifically excluded certain motor carriers from the definition of household goods motor carriers, and thus exempted those carriers from household goods regulations when the carrier "*does not load and unload*" the contents of the containers the carrier is shipping. Carriers falling under the LSE are not subject to household goods and consumer protection regulations under FMCSA regulations parts 375 (for household goods, including form requirements), 365 (for motor carrier registration requirements) and 387 (for insurance requirements). *See* 49 U.S.C. 13102(12)(C): *see also* 49 CFR 375.103, HHG definition, paragraphs (3) and (4); Limited Service Exclusion for Household Goods Motor Carriers and Related Registration Requirements for Brokers, 78 Fed. Reg. 19568 (Apr. 1, 2013).

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Amended Pre-Trip Safety Information for Motorcoach Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA amends its pre-trip safety guidance recommending that the motorcoach industry encourage passengers to use lap/shoulder seat belts. This amended guidance is provided in response to National Transportation Safety Board (NTSB) recommendations and the National Highway Transportation Safety Administration's (NHTSA) Final Rule published on November 25, 2013 [78 FR

70416] titled, "Federal Motor Vehicle Safety Standards; Occupant Crash Protection."

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Nahmens, Commercial Passenger Carrier Safety Division (MC–ECP), *greg.nahmens@dot.gov,* 202–366–5054. Office hours are from 8:00 a.m. to 5:00 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1999, the NTSB issued recommendations H–99–7 and H–99–8 to the Secretary of Transportation concerning safety briefing materials for motorcoach operators, and pre-trip safety information for passengers. The recommendations provided as follows:

H–99–7 Provide guidance on the minimum information to be included in safety briefing materials for motorcoach operators.

H–99–8 Require motorcoach operators to provide passengers with pre-trip safety information.

The recommendations resulted from NTSB's special investigation report, "Selective Motorcoach Issues," which included two motorcoach crashes from the late 1990s where passengers felt a general sense of panic and did not know what to do on a motorcoach during the emergency. The NTSB concluded that emergency instructions can be crucial to a safe and expedient evacuation in the event of a motorcoach crash or emergency.

In the spring of 2003, FMCSA formed a stakeholder working group to develop guidance in response to the NTSB recommendations. The working group met on September 16, 2003. Because of the operational variances in the industry, making it inappropriate to apply one basic regulatory approach universally, FMCSA decided to allow motorcoach companies the flexibility to conduct pre-trip safety briefings that are tailored to each individual company's overall safety and operational procedures. FMCSA concluded, based upon the diverse operational types of motorcoach carriers, that it would be best to initially encourage the motorcoach industry to take voluntary action to improve pre-trip safety awareness for passengers.

A notice and request for comments was published in the **Federal Register** on August 28, 2006, [71 FR 50971] which proposed the voluntary adoption of pre-trip safety briefings by the motorcoach industry, with flexible implementation in consideration of the diverse operational types and styles.

On September 13, 2007, the FMCSA published a final notice in the **Federal Register** [72 FR 52424] announcing the Agency's "Basic Plan for Motorcoach Passenger Safety Awareness," and ranking the recommended safety topics in order of importance with a list of examples of the various methods for presenting the safety information.

To assist the motorcoach industry with implementation of passenger safety-awareness programs, FMCSA developed materials including two sample pamphlets, a pre-trip informational poster, and an audio pre-trip safety briefing which was translated into six foreign languages and recorded. These informational tools were mailed to all registered motorcoach companies, distributed at industry seminars and conferences, and placed on FMCSA's Web site to encourage free downloading, adoption, and use.

More recently, NHTSA published a Final Rule on November 25, 2013, [78 FR 70416] titled, "Federal Motor Vehicle Safety Standards; Occupant Crash Protection," which amended Federal Motor Vehicle Safety Standards (FMVSS) numbers 208 and 210 to require lap/shoulder seat belts for each passenger seating position in all new over-the-road buses, and in new buses other than over-the-road buses with a gross vehicle weight rating greater than 26,000 pounds, with certain exclusions. Prior to this, seat belts were only required to be installed for the driver.

On August 4, 2015, in response to a multiple-fatality crash in Orland, California, the previous year involving a motorcoach and subsequent fire, NTSB issued new recommendations to FMCSA concerning safety briefing materials for motorcoach operators, and pre-trip safety information for passengers. The recommendations are provided below.

H–15–14 Require all passenger motor carrier operators to (1) provide passengers with pre-trip safety information that includes, at a minimum, a demonstration of the location of all exits, explains how to operate the exits in an emergency, and emphasizes the importance of wearing seat belts, if available; and (2) also place printed instructions in readily accessible locations for each passenger to help reinforce exit operation and seat belt usage.

H–15–15 Update your Web site guidance to include information on the mandated three-point restraints effective November 2016 for all new over-the-road buses and for other than over-the-road buses with a gross vehicle weight rating greater than 11,793 kilograms (26,000 pounds).

With this notice, FMCSA is adding the use of seat belts to the previously issued pre-trip safety information for passenger carriers. In an effort to assist motorcoach companies with implementing this amended safety-awareness program for passengers, FMCSA has developed sample safety information, which it makes available to motorcoach carriers and passengers through presentations, during industry and public safety events and through the FMCSA public Web site at *https://www.fmcsa.dot.gov/safety/passenger-safety/pre-trip-safety-information-bus-passengers.* An electronic version of the safety briefing information is available in both English and other languages. Content is also available on the Agency's Web site which can be downloaded and printed for the convenience and use of the industry and public. These materials are available at no charge and can be used by motorcoach companies whether they choose to distribute safety information to passengers during boarding or elect to place safety briefing information in the pouches or sleeves of the seatbacks.

Amended Basic Plan for Motorcoach Passenger Safety Awareness

FMCSA announces the following revisions to the Basic Plan; they are listed in order of importance.

Amended Basic Plan for Motorcoach Passenger Safety Awareness

Recommended Safety Topics To Be Covered

1. *Emergency exits*—Point out the location of all emergency exits (push-out windows, roof vent, and side door) and explain how to operate them. Emphasize that, whenever feasible, the motorcoach door should be the primary exit choice. Encourage able-bodied passengers to assist any injured or mobility-impaired passengers during an emergency evacuation. Provide passengers with sufficient guidance to ensure compliance with 49 CFR 392.62, "Safe operation, buses."
2. *Seat Belt Use*—If equipped, recommend the use of shoulder/lap seat belts whenever passengers occupy any seating position.
3. *Emergency Contact*—Advise passengers to call 911 by cellular telephone in the event of an emergency.
4. *Driver Direction*—Advise passengers to look to the driver for direction and follow his/her instructions.
5. *Fire Extinguisher*—Point out the location of the fire extinguisher.
6. *Restroom Emergency Push Button or Switch*—Inform motorcoach passengers of the emergency signal device in the restroom.
7. *Avoiding Slips and Falls*—Warn passengers to exercise care when

boarding and exiting the motorcoach and to use the handrail when ascending or descending steps. Encourage passengers to remain seated as much as possible while the motorcoach is in motion. If it is necessary to walk while the motorcoach is moving, passengers should always use handrails and supports.

Methods of Presenting the Amended Safety Information

The following presentation methods are examples of how to present safety information to motorcoach passengers. The list below should not be construed to restrict combinations of the following methods or additional presentation methods.

1. *During passenger boarding*—Informational pamphlets or printed materials could be distributed to motorcoach passengers during boarding.

2. *After passenger boarding and immediately prior to moving the motorcoach*—

a. The driver requests the passengers to review informational pamphlets/printed materials located in the seat back pocket.

b. The driver provides an oral presentation (similar to the presentations by airline flight attendants prior to take-off) with or without informational pamphlets/printed materials as visual aids.

c. An automated presentation over the motorcoach audio system.

d. An automated presentation over the motorcoach video system.

Timing and Frequency of the Presentation

Demand-responsive motorcoach operations, such as charters and tour services, should present the safety information to motorcoach passengers after boarding and prior to movement of the motorcoach.

Fixed route motorcoach service operations should present the safety information at all major stops or terminals, after any new passengers have boarded and prior to movement of the motorcoach.

Issued on: August 18, 2016.

T.F. Scott, Darling, III,

Administrator.

[FR Doc. 2016–20493 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the Long Bridge Project in Washington, DC

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS).

SUMMARY: FRA announces its intent to prepare an EIS for the Long Bridge Project jointly with the District Department of Transportation (DDOT). The Long Bridge Project (Proposed Action) consists of potential improvements to bridge and related railroad infrastructure located between the Virginia Railway Express (VRE) Crystal City Station in Arlington, Virginia and Control Point (CP) Virginia in Washington, DC. FRA and DDOT will develop the EIS in compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.* FRA and DDOT invite the public and Federal, state, and local agencies to provide comments on the scope of the EIS, including the purpose and need; alternatives to analyze; environmental effects to consider and evaluate; methodologies to use for evaluating effects; and the approach for public and agency involvement.

DATES: Persons interested in providing written comments on the scope of the EIS (scoping comments) must do so by September 26, 2016. Please submit written comments via the methods specified below.

A public scoping meeting is scheduled on Wednesday, September 14, 2016, between 3:00 p.m. and 6:00 p.m. in Washington, DC. The meeting will be held at the L'Enfant Plaza Club Room, Promenade Level, 470 L'Enfant Plaza SW., Washington, DC 20024. Oral and written comments will be accepted at the September 14, 2016 meeting. The meeting facilities will be accessible to persons with disabilities. If special translation, signing services, or other special accommodations are needed, please email: *info@longbridgeproject.com,* or call 202–671–2829 at least one week prior to the meeting.

ADDRESSES: The public and other interested parties are encouraged to submit written scoping comments by mail, the Internet, email, or in person at the scoping meeting. Scoping comments can be mailed to the address identified in the "For Further Information Contact" paragraph below. Internet and email correspondence may be submitted through the Long Bridge Project Web site (*http://longbridgeproject.com/*) or at *info@longbridgeproject.com.*

FOR FURTHER INFORMATION CONTACT: Amanda Murphy, Environmental Protection Specialist, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Avenue SE., (Mail Stop–20), Washington, DC 20590; telephone: (202) 493–0624.

SUPPLEMENTARY INFORMATION: FRA is an operating administration of DOT and is responsible for overseeing the safety of railroad operations, including the safety of any proposed rail ground transportation system. FRA is also authorized to provide, subject to appropriations, funding for intercity passenger and rail capital investments and to provide loans and other financial support for railroad investment. In 2016, FRA awarded DDOT a grant to prepare an EIS for the Proposed Action, and FRA may provide funding or financing for the rehabilitation or replacement of the Long Bridge in the future.

FRA is the lead Federal agency under NEPA; DDOT, as project sponsor, is a joint lead agency. FRA and DDOT will prepare the EIS consistent with NEPA, the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA in 40 CFR parts 1500–1508; FRA's Procedures for Considering Environmental Impacts in 64 FR 28545, dated May 26, 1999; and 23 U.S.C. 139. After release and circulation of a Draft EIS for public comment, FRA will issue a single document consisting of the Final EIS and a Record of Decision under the Fixing America's Surface Transportation Act (Pub. L. 114–94, section 1304(n)(2)) unless it determines that statutory criteria or practicability considerations preclude issuing a combined document.

The EIS will also document compliance with other applicable Federal, state, and local environmental laws and regulations, including: section 106 of the National Historic Preservation Act; the Clean Water Act; section 4(f) of the Department of Transportation Act of 1966; the Endangered Species Act; Executive Order 11988 and USDOT Order 5650.2 on Floodplain Management; Executive Order 11990 on Protection of Wetlands; the Magnuson-Stevens Act related to Essential Fish Habitat; the Coastal Zone Management Act; and Executive Order 12898 on Environmental Justice.

Project Background

The current Long Bridge, dating from 1904, is owned and maintained by CSX Transportation (CSXT). It is the only freight railroad crossing over the Potomac River between the District of Columbia and the Commonwealth of Virginia. The two-track bridge serves CSXT freight trains, National Railroad Passenger Corporation (Amtrak) passenger rail trains, and VRE commuter rail trains. Norfolk-Southern (NS) has trackage rights on the bridge and connecting CSXT tracks but does not currently exercise those rights.

In 2011, DDOT received a High Speed Intercity Passenger Rail grant from FRA to complete a two-phase feasibility study of the rehabilitation or replacement of the Long Bridge. Long Bridge Study Phase I included a preliminary operations plan; visual inspection of the corridor; initial evaluation of existing and future capacity needs; and preliminary development of conceptual alternatives. Phase II of the Long Bridge Study developed a draft Purpose and Need Statement; developed a service plan based on future demand in the corridor; further refined conceptual alternatives; and defined evaluation criteria to screen and identify alternatives which will be carried forward for analysis. In 2016, DDOT received a Transportation Investment Generating Economic Recovery grant from FRA for the preparation of the Long Bridge EIS (Phase III).

The Long Bridge is located within the Washington Monumental Core. The EIS Study Area extends approximately 3.2 miles from the VRE Crystal City Station in Arlington, Virginia to CP Virginia located near Third Street SW., in Washington, DC. The EIS Study Area includes Federal park land managed by the National Park Service; historic and cultural properties; the Potomac River; offices, hotels, and apartment buildings; transportation facilities (VRE Crystal City Station, VRE L'Enfant Station, Long Bridge, eleven other railroad bridges, and four roadway bridges); and numerous pedestrian and bicycle trails.

Purpose and Need

The purpose of the Proposed Action is to address reliability and long-term railroad capacity issues for the Long Bridge corridor. The Proposed Action is needed to identify alternatives that would increase capacity to meet projected demand for passenger and freight rail services; improve operational flexibility and resiliency; and provide redundancy for this critical link in the local, regional, and national railroad network.

The need to make improvements to the Long Bridge corridor is noted in various studies. An Amtrak study in 1999 (*Potential Improvements to the Washington Richmond Railroad Corridor*) identifies the Washington Metropolitan Area, including the Long Bridge, as the most critical section of the Southeast High Speed Rail (SEHSR) corridor and stated the need for capacity improvements. Following the 1999 infrastructure study, FRA completed a Tier 1 EIS for the SEHSR corridor (May 2002). The Tier 1 EIS identified a Preferred Alternative that utilized the Richmond, Fredericksburg & Potomac rail corridor, which includes the Long Bridge. VRE's *System Plan 2040* states that increasing the capacity at the Long Bridge is critical to its long-term growth and development. Additionally, the Metropolitan Washington Council of Governments' *National Capital Region Freight Plan* recommends a new rail bridge over the Potomac to minimize rail conflicts between passenger and freight trains.

Current and projected rail demand supports the need for capacity improvements to the Long Bridge corridor. Intercity passenger and commuter services operate at or close to capacity within the corridor during the morning peak hour, with eight passenger train movements scheduled in 60 minutes. Over the course of a full weekday, Amtrak and VRE currently operate 24 and 32 trains across the Long Bridge, respectively. CSXT freight trains operate approximately 18 through-freight trains each day on the same tracks used by the two passenger train operators.

Future rail demand during peak periods is forecasted to exceed the current capacity for Long Bridge. According to the service plan developed in Phase II of the Long Bridge Project, over the course of the full day, the number of trains crossing the bridge in 2040 is expected to increase to 44 trains for Amtrak, 92 for VRE, eight for the Maryland Area Regional Commuter (MARC); 42 for CSXT, and six for NS. The projected growth represents an average increase of over 100 percent in traffic on the bridge compared to 2015. The existing track infrastructure, which is limited by the two-track design of the Long Bridge, cannot support the increased demand.

The removal of additional rail capacity bottlenecks east and south of the Long Bridge, combined with population and employment growth in the Washington Metropolitan Area, increases the need for greater railroad capacity within the wider corridor. Attempting to serve future intercity passenger and freight rail demand solely on the current Long Bridge would not provide needed resiliency or redundancy within the Virginia to DC rail network. Limited capacity, coupled with shared-use infrastructure within the corridor, limits the flexibility of commuter, intercity passenger, and freight service to operate efficiently. These conditions create a systemic bottleneck that results in operational conflicts and delays, decreasing reliability and on-time performance of train operations. Currently, there are no reasonable detours to route rail traffic around the Long Bridge for maintenance or emergencies without extensive service delays.

This bottleneck limits efficient network connectivity for the rail operators within the Long Bridge corridor, including CSXT, VRE, Amtrak, and potentially MARC, and the overall transportation network. It also affects rail operations well beyond the limits of the Long Bridge corridor given the extensive reach of freight, commuter, and intercity passenger services along the eastern U.S. and beyond.

Proposed Alternatives To Consider

The EIS will consider a range of reasonable alternatives that FRA and DDOT will develop based on the purpose and need for the Proposed Action, information obtained through the scoping process, and previous reports. The 2015 Long Bridge Study Phase I identified concepts that are included in the initial range of alternatives to be considered in the EIS. FRA and DDOT will evaluate and screen the Phase I concepts and additional concepts during the NEPA process for elimination or further refinement. Alternatives will include the No-Build Alternative and Build Alternatives, including potential rehabilitation and/or replacement of the existing bridge.

Possible Effects

The EIS will analyze the potential direct, indirect, and cumulative effects of the alternatives on the social, economic, and environmental resources in the Study Area. Environmental resources include, but are not limited to:

- Transportation;
- Social and economic conditions;
- Property acquisition;
- Parks and recreational resources;
- Visual and aesthetic resources;
- Historic and archaeological resources;
- Air quality;
- Aquatic navigation;
- Greenhouse gas emissions and resilience;
- Noise and vibration;

- Ecology (including wetlands, water and sediment quality, floodplains, and biological resources);
- Threatened and endangered species;
- Contaminated materials; and
- Environmental Justice.

This analysis will include identification of study areas appropriate for each resource; documentation of the affected environment; and identification of measures to avoid and/or mitigate significant adverse impacts.

Scoping and Comments

This Notice initiates the scoping process under NEPA, which helps guide the development of the Draft EIS. The FRA and DDOT invite comments from the public and all interested parties regarding the scope of the EIS to ensure that relevant issues, applicable planning efforts, constraints, and reasonable alternatives are addressed early in the development of the EIS. FRA and DDOT will also directly contact appropriate Federal, state, and local agencies as well as and private organizations that have previously expressed or that are known to have an interest in the Proposed Action.

FRA and DDOT will coordinate with participating agencies during development of the Draft EIS under 23 U.S.C. 139. FRA will invite all agencies and Native American Tribes that may have an interest in the Proposed Action to become participating agencies for the EIS. If an agency or Native American Tribe is not invited and would like to participate, please contact FRA (“For Further Information Contact” section). The lead agencies will develop a Coordination Plan summarizing how the public and other agencies will be engaged in the process. The Coordination Plan will be posted to the Project Web site (*http://longbridgeproject.com/*) and to FRA's Web site (*www.fra.dot.gov/Page/P0214*).

Future Public Participation and Outreach

At various milestones during the development of the Long Bridge EIS, FRA and DDOT will provide additional opportunities for public and interested party consultation, such as public meetings, open houses, newsletters, and requests for comments/review of the EIS. Dates, times, and locations for public meetings and other opportunities for public participation will be announced through the Long Bridge Project Web site (*http://longbridgeproject.com/*), mailings, public notices, advertisements, and press releases.

Issued in Washington, DC, on August 19, 2016.

Felicia Young,

Acting Director, Office of Program Delivery.

[FR Doc. 2016–20481 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA—2016–0084; Notice 2]

Withdrawal of Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice withdrawal.

On August 23, 2016, NHTSA inadvertently published, at 81 FR 57646, a notice seeking comments on a new uniform guideline for State highway safety programs, issued pursuant to section 402 of title 23 of the United States Code requires the Secretary of Transportation to promulgate uniform guidelines for State highway safety programs. NHTSA is withdrawing the August 23, 2016 notice.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued on: August 23, 2016.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–20578 Filed 8–24–16; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0069]

Agency Information Collection Activities: Request for Comments; Clearance of a New Information Collection(s): U.S. Department of Transportation Accessibility Concern Form

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1994, (44 U.S.C. 3501 *et seq.*), this notice announces the U.S. Department of Transportation's (DOT) intention to request the Office of Management and Budget's (OMB) approval for the utilization of the U.S. Department of Transportation Accessibility Concern Form when reporting accessibility challenges faced during travel on our Nation's streets, sidewalks, crosswalks, buses, trains, airports, and planes. The system will provide an accessible, coordinated, and seamless web-based portal for the traveling public to submit accessibility problems or challenges they face during travel on the Nation's streets, sidewalks, crosswalks, buses, trains, airports, and planes. The establishment of the system is in response the President's National Council on Disability (NCD) Report, “Transition Update: Where We've Been and What We've Learned,” released in 2015, as well as a letter to the Secretary of Transportation from the NCD dated May 12, 2015. The information received through the system will strengthen DOT's ability to understand the challenges and impacts that passengers with disabilities face every day when they use our nation' transportation systems. A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on June 13, 2016 (81 FR 38264). No comments were received.

DATES: Comments on this notice must be received by September 26, 2016.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Yvette Rivera, Departmental Office of Civil Rights, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; 202–366–4648; *adaconcerns@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: XXXX–NEW.

Title: Transportation Accessibility Concern Form.

Form Numbers: None.

Type of Review: OMB Approval.

Background: The current process for submitting concerns about American with Disabilities Act, as amended, (ADA) and other related civil rights violations is fragmented across the Department—sometimes being time consuming and cumbersome for the traveling public. Establishing a streamlined and consistent process would respond directly to the President's National Council on Disability, and more importantly, the information received through this new system would strengthen our ability to understand the challenges and impacts that persons with disabilities face every day as they travel using our nation's transportation systems. This would also offer significant improvements to ensuring that access to all modes of transportation is available to persons with disabilities and members of the public.

Estimated Number of Respondents: the U.S. Department of Transportation currently collects data on ADA and other civil rights-related concerns based on information provided by the public via written submission, or through a toll-free telephone number. Based on our analysis of data collected through present formats, DOT receives approximately 850 separate responses from the general public on accessibility-related concerns, including:

- 150 pieces of correspondence on one-time accessibility-related incidents
- 120 email messages
- 400 telephone calls
- 172 formal accessibility-related complaints.

Currently, the estimated Total Burden on Respondents: 15 to 30 minutes per submission.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including, (a) whether the proposed collection of information is necessary for the proper processing of transportation-related accessibility issues; (b) the accuracy of the estimated burden; (c) ways for the DOT to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. All responses to the notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC, on August 22, 2016.

Habib Azarsina,

OST Privacy and PRA Officer.

[FR Doc. 2016–20491 Filed 8–25–16; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1024

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1024, Application for Recognition of Exemption Under Section 501(a).

DATES: Written comments should be received on or before October 25, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(a).

OMB Number: 1545–0057.

Form Number: Form 1024.

Abstract: Organizations seeking exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 4,718.

Estimated Time Per Respondent: 61 hours, 47 minutes.

Estimated Total Annual Burden Hours: 291,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 19, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–20549 Filed 8–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1024

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1024, Application for Recognition of Exemption Under Section 501(a).

DATES: Written comments should be received on or before October 25, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 501(a).

OMB Number: 1545–0057.

Form Number: Form 1024.

Abstract: Organizations seeking exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in most paragraphs of section 501(c) must use Form 1024 to apply for exemption. The information collected is used to determine whether the organization qualifies for tax-exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 4,718.

Estimated Time per Respondent: 61 hours, 47 minutes.

Estimated Total Annual Burden Hours: 291,542.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 19, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–20521 Filed 8–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Request for Applications for the IRS Advisory Committee on Tax Exempt and Government Entities

AGENCY: Internal Revenue Service (IRS), Tax Exempt and Government Entities Division, Treasury.

ACTION: Notice and request for applicants or nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications for membership to serve on the Advisory Committee on Tax Exempt and Government Entities (ACT). Applications will be accepted for the following vacancies that will occur in June 2017: One (1) Federal, State and Local Governments, one (1) Indian Tribal Governments and one (1) Employment tax knowledge and experience in one or more areas of employee plans, exempt organizations, Indian tribal governments, tax exempt bonds or federal, state and local governments. To ensure appropriate balance of membership, final selection of qualified candidates will be determined based on experience, qualifications and other expertise.

DATES: Applications or nominations must be received on or before Monday, September 26, 2016.

ADDRESSES: Send applications and nominations using FAX: (888) 269–7419. If you need help, please call (202) 317–8798.

Application: Applicants must use the ACT Application Form (Form 12339–C) on the IRS Web site (*IRS.gov*). Applications should describe and document the proposed member's qualifications for membership on the ACT. Applications also should specify the vacancy for which the applicant wishes to be considered. *Incomplete applications will not be processed.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be sent to *tege.advisory.comm@irs.gov* or call (202) 317–8798.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs and procedures, as well as suggest improvements. The Secretary of the Treasury appoints ACT members, who serve three-year terms. ACT members will not be paid for their time or services. ACT members will be reimbursed for travel-related expenses to attend working sessions and public meetings, in accordance with 5 U.S.C. 5703.

The Secretary of the Treasury invites those individuals, organizations and groups affiliated with employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments to nominate individuals for membership on the ACT. Nominations should describe and document the proposed member's qualifications for ACT membership, including the nominee's past or current affiliations and dealings with the particular community or segment of the community that he or she would represent (such as employee plans). Nominations also should specify the vacancy for which the individual wishes to be considered. The Department of the Treasury seeks a diverse group of members representing a broad spectrum of persons experienced in employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal governments. Nominees must go through a clearance process before selection by the Department of the Treasury. In accordance with Treasury Directive 21–03, the clearance process includes pre-appointment and annual tax checks, and an FBI criminal and subversive name check, fingerprint check and security clearance.

Dated: August 18, 2016.

Melaney Partner,

Acting, Designated Federal Officer, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2016–20545 Filed 8–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request on Information Collection Tools Relating to Wage and Investment Behavioral Laboratory Customer Surveys and Support

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the collection of qualitative feedback on agency service delivery.

DATES: Written comments should be received on or before October 25, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202)622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Wage and Investment Behavioral Laboratory Customer Surveys and Support.

OMB Number: 1545–NEW. *Form Number:* N/A.

Abstract: Executive Order 12862 directs Federal agencies to provide service to the public that matches or exceeds the best service available in the private sector. Executive Order 13571 expands on this concept to include recent developments in private sector advances in internet customer service technologies. To assist the Agency is accomplishing the goal outlined in the Strategic Plan, the Wage and Investment Division continuously maintains a "customer-first" focus through routinely soliciting information concerning the needs and characteristics of its customers and implementing programs based on the information received. W&I Strategies and Solutions (WISS) is developing the implementation of a Behavioral Laboratory to identify, plan and deliver business improvement processes that support fulfillment of the IRS strategic goals.

Current Actions: This is a new request for OMB approval.

Type of Review: New collection.

Affected Public: This collection of information is necessary to enable the Agency to garner customer and stakeholder feedback in an efficient, timely manner, in accordance with our commitment to improving service delivery. The information collected from our customers and stakeholders will help ensure that users have an effective, efficient, and satisfying experience with the Agency's programs. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. It will also allow feedback to contribute directly to the improvement of program management.

Estimated Number of Respondents: 25,200.

Estimated Time per Respondent: 1 hr.

Estimated Total Annual Burden Hours: 22,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 2016.

Tuawana Pinkston,

IRS Reports Clearance Officer.

[FR Doc. 2016–20544 Filed 8–25–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Solicitation of Nominations for Appointment to the Veterans Rural Health Advisory Committee

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA), Office of Rural Health, is seeking nominations of qualified candidates to be considered for appointment to the Veterans Rural Health Advisory Committee (VRHAC). The Committee advises the Secretary on ways to improve and enhance access to VA healthcare services for enrolled Veterans residing in rural areas and the identification of barriers to providing services. The Committee makes recommendations to the Secretary regarding such activities. Nominations of qualified candidates are being sought to fill upcoming vacancies on the Committee.

DATES: Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on December 15, 2016.

ADDRESSES: Nominations should be submitted to the VA Office of Rural Health by email at *VRHAC@va.gov* or via United States Postal Service to VA Office of Rural Health, 810 Vermont Ave., Mail Code 10P1R, Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: VA Office of Rural Health, Department of Veterans Affairs, 810 Vermont Ave. NW., Mail Code 10P1R, Washington, DC 20420, or by telephone at (202) 632–8576. A list of the current membership can be viewed at *http://www.ruralhealth.va.gov/aboutus/vrhac.asp.*

SUPPLEMENTARY INFORMATION: The Committee was established by direction of the Secretary of Veterans Affairs, and operates under the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. 2. The Committee consists of 12 Members representing federal agencies appointed by the Secretary of VA and 4 appointed Ex Officio members. The Committee is tasked with examining ways to enhance health care services for Veterans in rural areas. The Committee works in collaboration with the VA Office of Rural Health (ORH) to discuss programs and policies that impact the provision of VA health care services to Veterans in rural areas. The Committee hosts a minimum of two Advisory meetings a year and provides recommendations to the VA Secretary.

Membership Criteria: Nominee must understand issues and/or policy affecting rural Veterans, their families, and the rural communities where they live. Nominee must be familiar with healthcare services, delivery of care in rural areas, and benefits issues as they pertain to rural Veterans. Members of the Committee meet in person twice a year and may meet at other times by teleconference as needed. Members serve an initial three-year term and the Secretary may reappoint members for additional terms of service. During the course of their terms, Committee members are expected to attend all meetings and to contribute their time and expertise to Committee projects. It is the potential candidate's responsibility to identify possible conflict(s) of interest that might affect their objectivity and recommendations submitted to the Secretary. If a potential conflict is identified, detailed information about the possible conflict such as employment, research grants and/or contracts must be provided to permit evaluation of possible conflicts of interest.

Professional Qualifications: Nominee must have experience working on Veterans' policy issues at the local, state or regional level; and have an understanding of how the rural healthcare delivery system operates.

Requirements for Nomination Submission: Nominations should be type written (one nomination per nominator). Nomination package should include: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers, and email address; (3) the nominee's curriculum vitae or resume, and (4) a summary of the nominee's experience and qualification relative to the professional qualifications criteria listed above. Self-nominations are welcome. Third-party nominations must indicate that the nominee has been contacted and is willing to serve.

Membership Terms: Individuals selected for appointment to the Committee shall be invited to serve a three-year term. Committee members will receive a stipend for attending Committee meetings, including per diem and reimbursement for travel expenses incurred.

The Department makes every effort to ensure that the membership of its Federal advisory committees is fairly balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, males and females, racial and ethnic minority groups, and the disabled are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability, or genetic information. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Authority: The Committee was established in accordance with 5 U.S.C. 2.

Dated: August 23, 2016.

LaTonya L. Small,

Federal Advisory Committee Management Office.

[FR Doc. 2016–20543 Filed 8–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR) will be held on Thursday, September 15, and Friday, September 16, 2016 in Room 4E400 at the Department of Veterans Affairs' Board of Veterans' Appeals Conference Room, 425 I Street NW., Washington, DC 20001. The meeting will begin at 8:00 a.m. (EST) each day and adjourn at 5:00 p.m. (EST) on September 15 and at 1:00 p.m. (EST) on September 16, 2016. The meeting will be partially closed to the public.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

On September 15, 2016, the Committee will meet in closed session. The Committee will discuss nominees for the office of Vice-Chair of the Committee for the one-year term from September 2016 through September 2017. During the closed session, the Committee will also meet with the VA Office of General Counsel. These discussions will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. Closing the meeting is in compliance with 5 U.S.C. 552b(c)(6).

On September 16, 2016, the Committee will meet in open session from 8:00 a.m. (EST) to 1:00 p.m. (EST). During the meeting, Committee members will be provided updated briefings on various VA programs designed to enhance the rehabilitative potential of disabled Veterans. Members will also begin consideration of potential recommendations to be included in the Committee's next annual report.

Although no time will be allocated for receiving oral presentations from the public, members of the public may submit written statements for review by the Committee to Anthony Estelle, Designated Federal Officer, Veterans Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at *anthony.estelle@va.gov*. In the communication, writers must identify themselves and state the organization, association or person(s) they represent. Individuals who wish to attend the meeting should RSVP to Anthony Estelle at (202) 461–9912, no later than close of business, September 7, 2016. Because the meeting is being held in a government building, a photo I.D. must be presented at the Guard's Desk as a part of the clearance process. Due to an increase in security protocols, and in order to prevent delays in clearance processing, you should allow an additional 30 minutes before the meeting begins. Any member of the public seeking additional information should contact Anthony Estelle at the phone number or email address noted above.

Dated: August 23, 2016.

LaTonya L. Small,

Advisory Committee Management Officer.

[FR Doc. 2016–20511 Filed 8–25–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Women Veterans (Committee) will conduct a site visit on September 19–23, 2016, in San Diego, CA. Sessions are open to the public, except when the Committee is conducting tours of VA facilities, participating in off-site events, and participating in workgroup sessions. Tours of VA facilities are closed, to protect Veterans' privacy and personal information, in accordance with 5 U.S.C. 552b(c)(6). The site visit will also include a town hall meeting for women Veterans and those who provide services to women Veterans.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

On Monday September 19, the Committee will convene an open session at the San Diego VA Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161, in Conference Room 1 (4E), from 8:30 a.m. to 4:00 p.m. The agenda will include overview briefings from the San Diego VA Medical Center leadership on the facilities, programs, demographics, women Veterans programs, the transition program, suicide prevention program, mental health, military sexual trauma, homeless Veteran program, caregiver support, telehealth, One VA, and Veterans Choice.

On Tuesday September 20, the Committee will convene closed sessions, as it tours the San Diego VA Medical Center, and the Mission Valley Clinic, 8810 Rio San Diego Drive, San Diego, CA 92108.

On Wednesday September 21, the Committee will convene a closed session, as it attends the Department of Veterans Affairs' National Veterans Summer Sports Clinic, hosted by the San Diego VA Medical Center. For information on the National Veterans Summer Sports Clinic, please visit *www.va.gov/opa/speceven/ssc/.*

On Thursday September 22, the Committee will convene a closed session, as it tours the San Diego VA Regional Benefit Office, 8810 Rio San Diego Drive, San Diego, CA 92108; the Fort Rosecrans National Cemetery, Cabrillo Memorial Drive, San Diego, CA 92106; and the Miramar National Cemetery, 5795 Nobel Drive, San Diego, CA 92122.

In the morning of September 23, the Committee will convene an open session at the San Diego Marriot La Jolla, 4240 La Jolla Village Drive, La Jolla, CA 92037, with San Diego VA Medical Center leadership, followed by a town hall meeting with the women Veterans and other stakeholders. The town hall meeting will begin at 10 a.m. and end promptly at noon. In the afternoon of September 23, the Committee will reconvene a closed session, to discuss Committee business, participate in workgroup discussions, and other administrative matters.

With the exception of the town hall meeting, there will be no time for public comment during the meeting. Members of the public may submit written statements for the Committee's review to *00W@mail.va.gov,* or by fax at (202) 273–7092. Any member of the public wishing to attend or seeking additional information should contact Shannon L. Middleton at (202) 461–6193.

Dated: August 23, 2016.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2016–20479 Filed 8–25–16; 8:45 am]

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0074; 4500030113]

RIN 1018–AY07

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Yellow-Legged Frog, the Northern DPS of the Mountain Yellow-Legged Frog, and the Yosemite Toad

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Sierra Nevada yellow-legged frog (*Rana sierrae*), the northern distinct population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*), and the Yosemite toad (*Anaxyrus canorus*) under the Endangered Species Act of 1973, as amended (Act). There is significant overlap in the critical habitat designations for these three species. The designated area, taking into account overlap in the critical habitat designations for these three species, is in total approximately 733,357 hectares (ha) (1,812,164 acres (ac)) in Alpine, Amador, Calaveras, El Dorado, Fresno, Inyo, Lassen, Madera, Mariposa, Mono, Nevada, Placer, Plumas, Sierra, Tulare, and Tuolumne Counties, California. All critical habitat units and subunits are occupied by the respective species. The effect of this rule is to designate critical habitat under the Act for the conservation of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad.

DATES: This rule is effective September 26, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/sacramento.* Comments and materials we received, as well as supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento CA 95825; telephone 916–414–6600; facsimile 916–414–6612.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0074, and at the Sacramento Fish and Wildlife Office (*http://www.fws.gov/sacramento*; see **FOR FURTHER INFORMATION CONTACT**, below). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble of this rule and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento CA 95825; telephone 916–414–6700; facsimile 916–414–6612. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Under the Endangered Species Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We listed the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog as endangered species, and the Yosemite toad as a threatened species, on April 29, 2014 (79 FR 24256). On April 25, 2013, we published in the **Federal Register** a proposed critical habitat designation for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad (78 FR 24516). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Here we are designating:

- Approximately 437,929 ha (1,082,147 ac) for the Sierra Nevada yellow-legged frog in Plumas, Lassen, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Mariposa, Mono, Madera, Tuolumne, Fresno, and Inyo Counties, California;
- Approximately 89,637 hectares (221,498 acres) for the northern DPS of the mountain yellow-legged frog in Fresno, Inyo and Tulare Counties, California; and
- Approximately 303,889 hectares (750,926 acres) for the Yosemite toad in Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

This rule is a final rule designating critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. This rule designates critical habitat necessary for the conservation of these listed species.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on January 10, 2014 (79 FR 1805), allowing the public to provide comments on our DEA. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

Peer review and public comment. We formally sought comments from five independent specialists to ensure that our designations are based on scientifically sound data and analyses. We obtained opinions from three knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in these final designations. We also considered all comments and information we received from the public during the comment periods.

Previous Federal Actions

Please refer to the proposed listing rule for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad (78 FR 24472, April 25, 2013) for a detailed description of previous Federal actions concerning these species.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad during three comment periods. The first comment period associated with the publication of the proposed designation (78 FR 24516) opened on April 25, 2013, and closed on June 24, 2013. A second comment period opened on July 19, 2013, and closed on November 18, 2013 (78 FR 43122). We also requested comments on the proposed critical habitat designation and associated draft economic analysis (DEA) during a third comment period that opened on January 10, 2014, and closed on March 11, 2014 (79 FR 1805). We received requests for public hearings, and two were held in Sacramento, California, on January 30, 2014. We also held two public informational meetings, one in Bridgeport, California, on January 8, 2014, and the other in Fresno, California, on January 13, 2014. We also participated in several public forums, one sponsored by Congressman McClintock and two sponsored by Congressman LaMalfa. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods.

During the first comment period, we received six comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 545 comment letters addressing the proposed critical habitat designation or DEA. During the third comment period, we received 221 comment letters addressing the proposed critical habitat designation or DEA. During the January 30, 2014, public hearings, 21 individuals or organizations made comments on the designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad.

All substantive information provided during the comment periods has either been incorporated directly into this final determination or is addressed below. Comments we received are either directly answered, or are sometimes grouped into general issues specifically relating to the proposed critical habitat designation for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, and are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From Federal Agencies

We received comments from three Federal agencies regarding the proposed critical habitat designations for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Comments we received are addressed below.

(1) *Comment:* The U.S. Forest Service (USFS) suggested removal of certain areas from the proposed critical habitat in the Inyo National Forest for Sierra Nevada yellow-legged frog due to local extirpation, and the removal of Echo Lakes from subunit 2E due to high recreational use and conflicts with Lahontan cutthroat trout introductions.

Our Response: We do not agree that populations are extirpated in these areas of Inyo National Forest, and we are therefore not removing these areas from critical habitat. Our records indicate that the populations in these areas remain extant, based on the criteria we used to determine occupancy. These criteria require three consecutive zero-count visual-encounter surveys of the Sierra Nevada yellow-legged frog to confirm extirpation using post-1995 frog survey records. With regard to critical habitat exclusions, we have evaluated the requests from USFS and many others (see *Comments from States* and *Public Comments,* below), and have reconsidered the inclusion of a limited number of developed reservoirs from our final critical habitat designation. As a result of this reconsideration, Echo Lakes (Upper and Lower) are not included in this final critical habitat designation. A list of other reservoirs affected by our reconsideration, and our associated rationale and criteria used to derive this list, are explained below (see Criteria Used To Identify Critical Habitat, below).

(2) *Comment:* USFS requested a mix of critical habitat additions for the Sierra Nevada yellow-legged frog and Yosemite toad in certain areas, and they commented that we did not propose critical habitat to provide connectivity between occupied habitat subunits. Specific areas recommended for expansion of Sierra Nevada yellow-legged frog critical habitat included: Hellhole Meadow in the Lake Tahoe Basin Management Unit; Bourland Meadow, Moore Creek, and Skull Creek in the Stanislaus National Forest; Middle Creek in the El Dorado National Forest; additions to areas in the Plumas National Forest, including subunit 1D, subunit 1B, and areas to merge subunit 1B and 1C across extant localities and to increase connectivity and protect newly discovered localities in subunit 2A; and the Witcher Meadow/Birch Creek area to provide a source for frog translocations into Rock Creek drainage and Eastern Brook Lakes in the Inyo National Forest. USFS also asked about the potential for future critical habitat additions.

Our Response: We concur that our proposed designation of critical habitat did not include broad-scale connectivity across subunits. However, in many areas of high-quality habitat, we are designating large areas that do allow connectivity between likely metapopulations as well as some areas for dispersal of individuals to recolonize historical habitat should management result in positive population trends. We acknowledge that for genetic clades with greater numbers of extant populations, we did not include every Sierra Nevada yellow-legged frog locality. However, designation as critical habitat is not a prerequisite for future conservation actions (such as those through a conservation strategy and recovery plan) implemented by the agencies with appropriate jurisdiction. Currently, we are working with USFS and the National Park Service (NPS) on the development of a conservation strategy that can help guide conservation actions until the completion of a recovery plan for Sierra Nevada yellow-legged frog and Yosemite toad. We agree that these areas are important habitat to consider during development of these plans and will be factored into the conservation of Sierra Nevada yellow-legged frog and Yosemite toad. We are optimistic that our positive collaborative partnership with USFS and NPS will continue in the future. Additional critical habitat would only be designated under a revision of the current critical habitat rule, which we do not currently envision.

(3) *Comment:* USFS and others commented that our database was lacking records for all occurrences or that, in some cases, populations that we considered extant were actually extirpated.

Our Response: As discussed in the occurrence criteria, we used available location data from multiple sources for frog localities seen in surveys since 1995 (that have not been confirmed to be extirpated through subsequent surveys) and for Yosemite toad localities documented since 2000. It appears that some highlighted data discrepancies are a function of multiple data sources, as not all agencies are aware of the same records. In some areas, we missed localities, either because we did not receive the data during our initial data request period, or the populations were actually discovered after drafting the proposed critical habitat designation. We often must institute a cutoff date for receipt of new information in order to complete our critical habitat designations in time for internal review and subsequent publication. However, we did have the vast majority of information available during the drafting of proposed rule to designate critical habitat.

We have re-evaluated all the available occupancy data, and other than a portion of subunit 1A for the Sierra Nevada yellow-legged frog, we have not changed our designation as a result of the occupancy information for any subunits for Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or Yosemite toad. The limited areas that do have extant populations, unknown to us at the time of drafting, are not currently essential for the overall conservation of the species because of their limited extent. However, through the development of a final conservation strategy and recovery plan, the potential for these areas to contribute to species recovery will be considered.

(4) *Comment:* USFS commented that there is overlap in critical habitat designations for the Yosemite toad and Lahontan cutthroat trout (*Oncorhynchus clarkii henshawi*) in the El Dorado, Inyo, Stanislaus, and Sierra National Forests; for the Yosemite toad and Paiute cutthroat trout (*Oncorhynchus clarkii seleniris*) in the Sierra National Forest; for the Sierra Nevada yellow-legged frog and Paiute cutthroat trout in the Humboldt-Toiyabe National Forest; for the Sierra Nevada yellow-legged frog and Lahontan cutthroat trout in the El Dorado, Inyo, Tahoe, and Humboldt-Toiyabe National Forests, and the Lake Tahoe Basin Management Unit; and between the northern DPS of the mountain yellow-legged frog and Little Kern golden trout (*Oncorhynchus mykiss whitei*, listed as *Oncorhynchus aguabonita whitei*) in the Sequoia National Forest. They suggested considering this overlap and the possibly conflicting restoration objectives as a reason to exclude critical habitat for the frogs and toad in these areas.

Our Response: We concur that these critical habitat designations do overlap as outlined by USFS. Such overlap is to be expected when methodology for habitat designation is based on physical or biological features. We do not intend for the designation of critical habitat for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog to necessarily preclude restoration opportunities for listed fish species in these areas. We intend to factor in the consideration of conflicting species restoration goals during the respective conservation planning efforts that will be coordinated amongst the Federal and State resource agencies, rather than at the stage of the critical habitat designation process.

(5) *Comment:* The United States Marine Corps (USMC) requested that the Marine Corps Mountain Warfare Training Center near Bridgeport be exempted under section 4(a)(3) of the Act (16 U.S.C. 1531 *et seq.*) due to a draft integrated natural resources management plan (INRMP) that is in preparation, and they also requested an exclusion under section 4(b)(2) of the Act because of impacts to national security. The Marine Corps Mountain Warfare Training Center itself includes a base camp and residence quarters, but training activities take place across a wide area of the Humboldt-Toiyabe National Forest.

Our Response: We appreciate the unique nature and value of this training center for the USMC and other Armed Services to meet their high-altitude training needs. However, we find that the section 4(a)(3) exemption does not apply in this case because the INRMP remains in draft form, and thereby does not fully meet the section 4(a)(3) exemption standard. In addition, based on the draft INRMP map, the base camp itself is not located within the critical habitat designation. We appreciate the USMC's efforts to address natural resources at their training facility, and we will continue to work with them to finalize their INRMP.

The USMC also requested exclusion of the Marine Corps Mountain Warfare Training under section 4(b)(2) of the Act because of impacts to national security. Critical habitat designation and subsequent consultation under the Act focuses upon potential effects to the primary constituent elements (PCEs). Based on the information contained within the draft INRMP and information from the Humboldt-Toiyabe National Forest (USFS) regarding training conducted in subunit 2H, we do not anticipate significant impact on USMC training activities and thus national security in this area. Therefore, the Secretary is not exercising her discretion to exclude the Marine Corps Mountain Warfare Training under section 4(b)(2) of the Act for purposes of national security within subunit 2H. We look forward to working with the USMC and USFS to coordinate future activities within critical habitat.

(6) *Comment:* NPS commented that including upland habitat in the critical habitat designation for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog is not required because frogs are not expected to be in these areas unless they are within aquatic habitat complexes. NPS proposed an alternate buffer of 300 meters (m) (980 feet (ft)) to buffer the frogs' primary habitat.

Our Response: While we concur that the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow legged frog spend a predominant amount of their lives in wetland habitats, they are known to travel across mesic terrestrial habitat, and such dispersal and migration is required to recolonize habitat areas from which they have been extirpated. Therefore, this is an essential component of the species' life-history requirements, and inclusion of corridors in mesic habitat connecting wetland habitats is an element of our criteria defining habitat that is essential to the species' conservation. We do not interpret NPS's comment to suggest that we exclude these mesic upland areas.

We do concur that frogs are very unlikely to be found in xeric upslope habitats (catchments up to ridgelines where NPS does request exclusions), some of which were included in the designation. The Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog, being amphibians, are quite likely sensitive to a wide range of aquatic contaminants, and the PCE of water quality is potentially influenced by upgradient activities. Further, in light of future threats associated with climate change, the PCE of water quantity to provide for the critical wetland areas is relevant.

We understand NPS's contention that NPS-managed catchments do not include many of the threat factors extant within other federally managed lands, and as such, recreational land uses predominant in the National Parks are unlikely to impact natural hydrology. However, the PCEs were written to take into consideration physical or biological features of habitat, regardless of jurisdiction or magnitude of operative threats. It is appropriate to apply the same criteria across jurisdictional boundaries based on habitat attributes as outlined in the discussion of physical or biological features section of this document.

In these instances where PCEs are not affected by the action (*i.e.,* no threats to habitat are introduced through Federal activities), a 'not likely to adversely affect' determination may be reached. During informal consultation, factors such as project area proximity to known frog localities and the specific nature of the project are factored in to the determination.

Comments From States

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." We did not receive comments from the State of California pertaining to the Yosemite toad proposed critical habitat designation. Comments received from the California Department of Fish and Wildlife (CDFW) regarding the proposal to designate critical habitat for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog are addressed below.

(7) *Comment:* CDFW recommended various Sierra Nevada yellow-legged frog critical habitat subunit removals based on differences in our data records (CDFW's current records do not indicate frogs in certain subunits because their current records do not include all USFS data), and because some of these areas experience heavy recreational use and have very low restoration potential.

Our Response: Based on the comments from CDFW that provided additional survey results, we have updated our records for the Sierra Nevada yellow-legged frog. We evaluated these updated data, in addition to the data we were provided by USFS, and we currently have a comprehensive occurrence database for the Sierra Nevada yellow-legged frog based on the best scientific data available. We recently reviewed all records based on the criteria followed by CDFW for their status evaluation conducted by the State to determine whether the species warrants listing under the California Endangered Species Act (CDFW (formerly CDFG) 2011, pp. 12–16) (*i.e.,* extant since 1995, unless three consecutive zero count surveys indicate extirpation). Our current records indicate that all proposed critical habitat units and subunits are occupied by extant populations. With this rule, we are designating these units and subunits as critical habitat for the Sierra Nevada yellow-legged frog.

We concur with the CDFW that certain reservoirs with higher degrees of development (managed reservoirs that have high water-level fluctuations and are surrounded by developed infrastructure such as significant number of cabins and/or a marina) and high public-use pressure (paved road-accessible reservoirs) have lower restoration potential. We have evaluated such reservoirs for removal from critical habitat in light of our existing criteria. This is discussed in full detail below (see Criteria Used To Identify Critical Habitat, below).

(8) *Comment:* CDFW recommended additions to Sierra Nevada yellow-legged frog critical habitat and the northern DPS of the mountain yellow-legged frog critical habitat to increase connectivity between certain subunits and to take advantage of good habitat areas for restoration opportunities in areas where we did not propose critical habitat.

Our Response: Based on their distance from existing known frog populations, we did not propose these additional areas for critical habitat designation. Please refer also to our response to Comment (2), above. We do agree that the areas recommended by CDFW represent potential areas for translocation of frogs once methods have been proven successful, and will consider including such areas in the final conservation strategy currently being developed in coordination with CDFW, USFS, and NPS, and in a future recovery plan.

Public Comments

(9) *Comment:* We received several comments that we should not designate private lands as critical habitat.

Our Response: According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. As directed by the Act, we proposed as critical habitat those areas occupied by the species at the time of listing and that contain the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. The Act does not provide for any distinction between landownerships in those areas that meet the definition of critical habitat.

(10) *Comment:* We received numerous comments expressing general and specific concerns about restrictions that commenters believe will be imposed on private lands as a result of critical habitat designation. We received several comments expressing concerns regarding the taking of private property through designation of critical habitat.

Our Response: When prudent and determinable, the Service is required to designate critical habitat under the Act. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership or establish any closures or place any restrictions on use of or access to the designated areas. Critical habitat designation also does not establish specific land management standards or prescriptions. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Where a landowner requests Federal agency funding or is required to obtain Federal agency authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

(11) *Comment:* We received several comments expressing concern that roads, buildings, ski resorts, hydroelectric facilities and infrastructure, etc., have been included in proposed critical habitat.

Our Response: When determining critical habitat boundaries within the proposed rule, we followed a habitat/species distribution (MaxEnt) model (see "(3) Habitat Unit Delineation," below) for determining critical habitat areas in the case of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog. This model did not incorporate extant stressors, such as level of development or fish presence, for example. To do so may have biased against the assurance that the appropriate areas requiring special management considerations be identified. In the case of the Yosemite toad, a similar model was utilized, but not relied upon, because of its implicit consideration of stressors in the model inputs.

For all three species, we made an effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological features. The maps we prepared may not reflect the non-inclusion of such developed lands. Any such lands left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat.

Areas that have been partially developed, or undeveloped areas proximate to developed structures, may and often do have physical or biological features that can sustain the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad during at least part of their life cycle, or may serve as habitat corridors to connect more suitable areas and allow dispersal, migration, and recolonization of historical habitat. These areas with the essential physical or biological features, or that may act as corridors, remain in the final critical habitat designation.

(12) *Comment:* We received numerous comments expressing concerns regarding access to public lands (road closures, off-highway vehicle (OHV) restrictions, grazing, fishing, etc.). We received numerous comments requesting specific exclusions for recreational reasons, primarily fishing within the range of the Sierra Nevada yellow-legged frog.

Our Response: Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. However, the designation of critical habitat does not prevent access to any land, whether private, tribal, State, or Federal. Designation of critical habitat does not affect land ownership. Critical habitat designation also does not establish specific land management standards or prescriptions. Critical habitat also does not preclude access to fishing in any specific lakes.

We considered a section 4(b)(2) exclusion for other relevant impacts (including recreational fishing) at a number of sites within the proposed critical habitat. However, in responding to public, agency, and peer review comments, and upon re-examination, we determined that these areas have very low restoration potential because of high public use, their developed state, and their distance from known frog occurrences. Using our revised criteria for identifying critical habitat, we found that many of these areas do not meet the criteria for inclusion in the designation, and, therefore, we have not included them in this final designation.

(13) *Comment:* Several commenters expressed concern about the use of the incremental approach to quantify the cost of the proposed rulemaking. One commenter states that the DEA should instead rely on a coextensive or full impact approach. The commenter asserts that the incremental approach withholds information about the true economic impacts of designating certain areas as critical habitat. In particular, the commenter asserts the incremental approach fails to adequately address secondary and indirect effects of the designation or account for the cumulative and synergistic effects of multiple laws restricting the use of land and water resources within proposed critical habitat.

Our Response: Because the purpose of the economic analysis is to facilitate the mandatory consideration of the economic impact of the designation of critical habitat, to inform the discretionary section 4(b)(2) exclusion analysis, and to determine compliance with relevant statutes and Executive Orders, focusing the economic analysis of the designation of critical habitat for the three Sierra amphibians on the incremental impact of the designation is appropriate. We acknowledge that significant debate has occurred regarding the incremental approach, with several courts issuing divergent opinions. Most recently, the U.S. Ninth Circuit Court of Appeals concluded that the incremental approach is appropriate, and the U.S. Supreme Court declined to hear the case (*Home Builders Association of Northern California* v. *United States Fish and Wildlife Service,* 616 F.3d 983 (9th Cir. 2010), cert. denied, 179 L. Ed. 2d 301, 2011 U.S. Lexis 1392, 79 U.S.L.W. 3475 (2011); *Arizona Cattle Growers* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010), cert. denied, 179 L. Ed. 2d 300, 2011 U.S. Lexis 1362, 79 U.S. L.W. 3475 (2011)). Subsequently, on August 28, 2013, we revised our approach to conducting impact analyses for designations of critical habitat, specifying that the incremental approach should be used (78 FR 53058, p. 53062).

(14) *Comment:* Several commenters assert that the baseline of the analysis is flawed. They assert that because critical habitat must be designated concurrently with a listing decision, there would be no listing without a critical habitat designation. Therefore, the baseline for the economic analysis should be the existing state of regulation prior to the listing of the species under the Act.

Our Response: Critical habitat cannot be designated for a species that is not listed under section 4 of the Act. However, it is possible to list a species without simultaneously designating critical habitat. A listing decision always precedes a critical habitat designation, even if they are promulgated concurrently. The U.S. Office of Management and Budget's (OMB) guidelines for best practices concerning the conduct of economic analysis of Federal regulations (Circular A–4) direct agencies to measure the costs of a regulatory action against a baseline, which it defines as the "best assessment of the way the world would look absent the proposed action." OMB's direction is reflected in our regulations specifying the approach we use to conduct impact analyses for designations of critical habitat (78 FR 53058; August 28, 2013).

(15) *Comment:* Several commenters assert that the Service can no longer segregate and disregard probable economic impacts on the basis that they are not quantifiable. The commenters state that prior court decisions within the Ninth Circuit allowed the Service to meet its obligation to consider probable economic impacts by analyzing only those impacts that the Service, in its discretion, deemed to be certain and quantifiable (historically, the costs of section 7 consultation). They assert that the DEA, however, is misleading if the economic impact of critical habitat designation is limited only to the costs incurred by Federal agencies during section 7 consultation. One commenter suggests that probable economic impacts include impacts to non-Federal activities that would be affected by the section 7 constraints on the Federal activities. The commenter also indicates that the DEA should consider economics related to non-Federal activities. Another commenter also cites 50 CFR 424.19, effective October 30, 2013, which explicitly recognizes that impacts which may only be (or may be better) analyzed qualitatively are properly addressed in an economic analysis.

Our Response: Economic impacts to non-Federal entities are considered in quantitative terms, where data allow, and qualitatively throughout the DEA. First, Exhibit 2–1 of the DEA presents the unit incremental administrative costs of section 7 consultation used in the economic analysis. The total unit cost presented in that exhibit includes costs to the Service, other Federal agencies, and third parties. Third parties include such non-Federal entities as project proponents (*e.g.,* hydroelectric and timber harvest activities) and State agencies (*e.g.,* CDFW) that may also participate in the consultation process. Thus, the economic analysis is not limited only to costs incurred by Federal agencies. Incremental costs incurred by third parties during the consultation process range from $260 to $1,400 per consultation.

Other potential impacts, where data limitations prevent quantification, are described qualitatively in the DEA. For example, in assessing the potential incremental cost of the proposed rule on hydroelectric facilities, section 4.2.2 of the DEA considers the potential for additional time delays that may occur because of the need to complete the section 7 consultation process. Similarly for timber harvest activities on privately owned lands, section 4.2.5 of the DEA considers the potential for the designation of critical habitat to cause unintended changes in the behavior of individual landowners, other Federal agencies, State, or local permitting or regulatory agencies. Specifically, this section of the DEA recognizes potential costs that may arise from changes in the public's perception of the burden placed on privately owned land from the designation of critical habitat.

In accordance with 50 CFR 424.19(b), which states, "Impacts may be qualitatively or quantitatively described," the Service considers both the qualitative and quantitative effects listed in the economic analysis when developing the critical habitat for these species.

(16) *Comment:* One commenter states that the DEA effectively ignores impacts related to different conservation efforts since the DEA is unable to predict the types of projects that may require different conservation efforts. The commenter cites a passage from the DEA on page ES–6, which states: "At this time, however, the Service is unable to predict the types of projects that may require different conservation efforts. Thus, impacts occurring under such circumstances are not quantified in this analysis. We focus on quantifying incremental impacts associated with the additional administrative effort required when addressing potential adverse modification of critical habitat in section 7 consultation." The commenter states that the lack of consideration of economic impacts related to conservation efforts makes the DEA useless and fraudulent, and suggests withdrawing the proposed critical habitat designation until a properly conducted economic analysis is available.

Our Response: Section 2.3 of the DEA describes the reasons why we do not anticipate these critical habitat designations will result in additional conservation requirements. Additionally, Appendix C of the DEA includes a memorandum, titled "Comments on How the DEA Should Estimate Incremental Costs for Sierra Nevada Yellow-legged Frog, Northern DPS of the Mountain Yellow-legged Frog, and Yosemite Toad Proposed Critical Habitat Designation," describing our reasoning on this issue. In general, where critical habitat is occupied by the listed species, conservation measures implemented in response to the species' listing status under the Act are expected to sufficiently avoid potential destruction or adverse modification of critical habitat. Thus, generally such projects are already avoiding adverse modification under the regulatory baseline, and no additional conservation measures or project modifications are expected following the critical habitat designation. In such instances, the DEA assumes that the incremental costs of the designations are limited to the portion of administrative effort required to address adverse modification during section 7 consultation. These assumptions are highlighted in the DEA as the chief source of uncertainty in the analysis. As discussed in section 2.3 of the DEA, we do acknowledge that there may be "limited instances" in which an action proposed by a Federal agency could result in adverse modification but not jeopardy of the species. However, information that would allow the identification of such instances is not available.

(17) *Comment:* Two commenters state that the DEA fails to adequately account for the costs to energy activities. One commenter asserts that the Service failed to prepare and submit a "Statement of Energy Effects," which is required for all "significant energy actions." The commenter further states that the Service should seek public input and review of the Statement of Energy Effects before submitting it, to assure it is done honestly and accurately.

Our Response: Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. These outcomes include, for example, reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity, or increases in the cost of energy production or distribution in excess of one percent.

As presented in chapter 4 of the DEA, impacts to the energy industry from the designation of critical habitat for the three Sierra amphibians is expected to be limited to additional administrative costs, and is not anticipated to result in any impacts to the supply, distribution, or use of energy. As shown in Exhibit 2–1 of the DEA, incremental costs incurred by third parties during the consultation process are approximately $875 per consultation. Based on the revenues of the energy companies reported in section A.1.2, the designation is unlikely to affect the cost of energy production or distribution.

(18) *Comment:* Several commenters assert that the assumption in the DEA that the entire designation is considered occupied is flawed. One commenter notes that the critical habitat units are generally large, and while at least one population may exist in each unit, the vast majority of acreage, water bodies, and meadows in any given subunit are likely to be unoccupied. Thus, assigning an "occupied" status to the entire unit misrepresents the extent of the species' distribution and is indefensible.

Our Response: As stated in section 4.1 of the DEA, in determining whether a specific critical habitat unit is considered occupied by the respective species, the DEA relies on information regarding species occupancy from the proposed rule. Specifically, the Service states: "All units and subunits proposed for designation as critical habitat are currently occupied by the Sierra Nevada mountain yellow-legged frogs, the northern DPS of the mountain yellow-legged frogs, or Yosemite toads . . . We are proposing to designate only geographic areas occupied by the species because the present geographic range is of similar extent to the historical range and therefore sufficient for the conservation of the species" (78 FR 24516, April 25, 2014, pp. 24522, 24523). In other words, the best available information suggests that all areas proposed as critical habitat be treated as occupied during consultation. See also the response to Comment (7), above.

In addition, we also considered the possibility that due to the large size of some critical habitat units, species occupancy may be uncertain for a specific project location within an occupied unit. In these instances, the Federal action agency may not be aware of the need to consult under the jeopardy standard, and the designation of critical habitat may therefore result in an increase in the number of consultations. In such instances, the full costs of section 7 consultation and resulting project modifications would be considered incremental. As stated in section 4.1 of the DEA, discussions with USFS, NPS, and CDFW, the three agencies most likely to consult with the Service in the study area, indicate that the designation is unlikely to have such an effect. All three agencies typically consult with the Service on a programmatic level across much of the State, and thus would be aware of the potential presence of the species throughout its range. Furthermore, all three agencies already have in place programs that protect the amphibians and their habitat. As a result, impacts to the amphibians and their habitat are already considered across the array of economic activities identified as threats to species conservation and recovery. Consequently, we assume that the designation is unlikely to change the section 7 consultation process or incur associated project modifications due solely to the designation of critical habitat.

(19) *Comment:* A commenter states that if the Service provided Industrial Economics Incorporated (IEc) with likely conservation efforts to be imposed, these efforts should be shared with the public. The commenter also cites paragraph 90 of the DEA, which provides categories of conservation efforts, including "non-native fish eradication, installation of fish barriers, modifications of fish stocking activities, changes in grazing activities, minimizing disturbance of streamside and riparian vegetation, minimizing soil and compaction and minimizing impacts on local hydrology." The commenter asks whether there are specific examples of when and where these conservation efforts would be considered and what the conservation measures associated with each effort are. The commenter goes on to state that conferencing is required during the listing decision-making period. Through conferencing, the Service should have a general idea of what conservation measures are being requested and what conservation measures might be imposed by the Service. The commenter asks about what measures are being requested and recommended during conferencing.

Our Response: The information presented in the DEA regarding possible conservation measures to protect the three Sierra amphibians was obtained from the proposed listing rule. The Service did not provide any additional information regarding possible conservation measures. More importantly, however, we reiterate that because all areas are considered occupied, the economic analysis concluded that the designation is unlikely to result in the requirement of additional conservation measures above and beyond those required to avoid jeopardy (*i.e.,* in response to the listing of the species). In other words, the designation of conservation measures required to avoid jeopardy is expected to sufficiently avoid potential destruction or adverse modification of critical habitat.

As to the availability of additional information on conservation measures from conferencing, due to the timing of the proposed rules to list and designate critical habitat for these three species, information on project modifications from conferencing was unavailable at the time the DEA was developed. Since the publication of the DEA, the Service released a programmatic biological opinion on the forest programs associated with nine National Forests in the Sierra Nevada of California for the amphibians. The biological opinion, released in December 2014, provides more detailed information on general conservation measures as well as program-specific conservation measures for the three Sierra amphibians. The full biological opinion is publicly available at: *http://www.fws.gov/sacramento/es/Survey-Protocols-Guidelines/Documents/USFS_SNA_pbo.pdf.* The conservation measures included in this biological opinion are intended to ensure activities at the National Forest do not jeopardize the species and provide additional evidence of the types of baseline protection likely to be provided by the listing of the species. We updated the FEA to reference the new information on species conservation measures available from the December 2014 biological opinion.

(20) *Comment:* One commenter states that similar economic impacts were reviewed in the August 2006 Economic Analysis of Critical Habitat Designation for the Mountain Yellow-Legged Frog. The critical habitat designation for the Mountain Yellow-Legged Frog included 8,770 acres in Los Angeles, San Bernardino, and Riverside Counties. The commenter highlighted the findings from that analysis, which estimated total future impacts between $11.4 million to $12.9 million (undiscounted) over 20 years, of which impacts to recreational trout fishing accounted for 57 percent of total impacts. The commenter states that this designation is over 200 times larger than the designation proposed in southern California, yet the DEA found only $17,500 in impacts related to fishing over 17 years.

Our Response: The economic analysis for the critical habitat designation for the southern DPS of the mountain yellow-legged frog is not comparable with the economic analysis conducted for the critical habitat designation for the three Sierra amphibians. Specifically, the 2006 economic analysis for the critical habitat designation for the southern DPS of the mountain yellow-legged frog relied on the coextensive methodology of estimating economic impacts. However, the current policy directs the Service to use the incremental approach to economic analyses based in part on several legal precedents, including *Arizona Cattle Growers' Assoc.* v. *Salazar,* 606 F.3d 1160 (9th Cir. 2010), cert. denied, 179 L. Ed. 2d 300, 2011 U.S. Lexis 1362, 79 U.S. L.W. 3475 (2011) and *Cape Hatteras Access Preservation Alliance* v. *DOI,* 2010 U.S. Dist. Lexis 84515 (D.D.C. August 17, 2010). As such, the DEA for the three Sierra amphibians relies on the incremental approach (see also Comment (13), above).

(21) *Comment:* One commenter states that the Service should engage the public for their input when writing the DEA.

Our Response: In the process of developing the DEA, we conducted two rounds of outreach actions. First, we reached out to each of the 10 National Forests and 2 National Parks that fall within proposed critical habitat boundaries. The majority of the proposed critical habitat falls within areas managed by the USFS (61 percent) and the NPS (36 percent). Through these conversations, Federal entities indicated that they will undertake actions to protect the species regardless of whether critical habitat is designated. These agencies are the parties entrusted with public land management, as more than 95 percent of all the land designated as critical habitat is under their ownership and jurisdiction. Second, we conducted outreach with third-party entities that may participate in section 7 consultations because they may seek permits to conduct activities on Federal lands. For example, in evaluating potential impacts to dams and water diversions located within the proposed critical habitat boundaries, we reached out to hydroelectric project owners as stated in section 4.2.2 of the DEA. These affected parties are ideal candidates to help frame economic impacts of critical habitat designation and consultation with the Service.

(22) *Comment:* One commenter states that the assumed consultation costs are extremely low and that man hours should also be shown to help discern the level of effort assumed for consultation.

Our Response: The DEA relies on the best available information to estimate the administrative costs of section 7 consultation. As described in Exhibit 2–1 of the DEA, the consultation cost model is based on a review of consultation records and interviews with staff from three Service field offices, telephone interviews with Federal action agencies (*e.g.,* BLM, USFS, and U.S. Army Corps of Engineers), and telephone interviews with private consulting firms who perform work in support of permittees. In the case of Service and Federal agency contacts, we determined the typical level of effort required to complete several different types of consultations (*i.e.,* hours or days of time), as well as the typical Government Service (GS) level of the staff member performing this work. In the case of private consultants, we interviewed representatives of firms in California and New England to determine the typical cost charged to clients for these efforts (*e.g.,* biological survey, preparation of materials to support a biological assessment). The model is periodically updated with new information received in the course of data collection efforts supporting economic analyses and public comment on more recent critical habitat rules. In addition, the GS rates are updated annually.

(23) *Comment:* One commenter states that the DEA fails to include costs associated with additional reviews required under the California Environmental Quality Act (CEQA) for lands designated as critical habitat for the three Sierra amphibians. Whenever a public agency authorizes, approves, funds, or carries out an activity that will result in a physical change to the environment, CEQA requires the entity to undertake an environmental review. The commenter asserts that the DEA improperly excludes a discussion of the additional costs of processing projects under CEQA due to the designation.

Our Response: The potential for incremental impacts related to the triggering of new requirements under CEQA is relevant to non-Federal lands included in the proposed rule, which account for less than 5 percent of the total designation. Section 2.3.2 of the DEA provides a general discussion of the potential for critical habitat to trigger other State and local laws. The DEA concludes that such incremental impacts are unlikely in the case of the three Sierra amphibians due to the widespread awareness of the species and their habitats and existing management strategies to protect the species. For a discussion of these management strategies, see chapter 3 of the DEA.

Importantly, the three Sierra amphibians are thought to occupy all the areas proposed for designation. Thus, for activities occurring on private land, such as logging activities requiring a State-approved timber harvest plan, CEQA is likely to be triggered due to the presence of a listed species, regardless of whether critical habitat is present. Furthermore, the Sierra Nevada yellow-legged frog and the mountain yellow-legged frog are listed species under the California Endangered Species Act; thus, the presence of these species would already trigger CEQA absent the designation of critical habitat.

(24) *Comment:* Several commenters state that the DEA does not adequately address regional economic impacts. One commenter states that the DEA only presents costs to managing governmental agencies rather than regional economic impacts. Another commenter is particularly concerned with distributional impacts related to recreation on Squaw Ridge in Amador County.

Our Response: Given the limited nature of incremental impacts likely to result from this designation, measurable regional impacts are not anticipated as a result of this designation. Therefore, we did not use a regional input-output model to estimate regional impacts. Section 2.2.2 of the DEA discusses distributional and regional economic effects in greater depth.

(25) *Comment:* Several commenters identify the chytrid fungus (*Batrachochytrium dendrobatidis* (Bd)) epidemic as a significant threat to the amphibians and their habitat. The commenters state that the DEA should include the economic cost of eradicating Bd. Without a plan to reduce or eliminate Bd, the commenters note it is debatable whether creating critical habitat designations would have much benefit to the species.

Our Response: We agree that disease and pathogens, including Bd, represent a significant threat to the amphibians. Chytridiomycosis, the disease caused by Bd, directly affects individual members of the species. However, it does not result in adverse modification of critical habitat as a result of Federal activities. Further, there are currently no known methods (and therefore no plans or restoration efforts to associate with costs) to eliminate Bd, and reducing its spread among areas is the only current known mitigation measure. These mitigation measures were already in place prior to the listing of the species. In other words, no additional conservation efforts intended to reduce the spread of Bd would be undertaken in response to the critical habitat designation. Therefore, we do not anticipate that this critical habitat designation will result in incremental costs associated with Bd mitigation efforts.

(26) *Comment:* Several commenters are concerned about economic impacts related to fishing, and they state that the elimination or reduction of fish in this area would create immense economic impacts to affected areas and to the life and livelihood of all who live and work in the area.

Our Response: As discussed in section 4.2.1 of the DEA, the proposed rulemaking is not anticipated to result in the elimination or reduction of fish within areas designated as critical habitat. In other words, any changes in fish stocking activities would occur regardless of the critical habitat designation, as these will occur in response to the listing of the species. As discussed in chapter 3 of the DEA, there are a number of programs that provide significant baseline protections to the amphibians from fish predation, including the California Department of Fish and Wildlife (CDFW) High Mountain Lakes Project, the Restoration of Native Species in High Elevation Aquatic Ecosystems Plan under development by the Sequoia & Kings Canyon National Park, and the High Elevation Aquatic Ecosystem Recovery and Stewardship Plan under development by the Yosemite National Park. With the listing of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog (the species' for which fish presence is a threat), additional regulatory protections are now in place. The DEA assumes that the incremental costs of the designation associated with fish stocking programs would be limited to the administrative costs of the additional effort to address adverse modification during consultation.

(27) *Comment:* Several commenters express concern that the designation will affect fishing in affected counties and highlight the importance of fishing to the local economies affected by the designation. For example, recreational fishing contributes more than $2 billion annually to California's economy, and within Mono County, investments in fish stocking and tourism are estimated

to total approximately $8.8 million over the next 17 years.

Our Response: As discussed in Comment (26), we do not anticipate that the critical habitat designation will result in changes to fish-stocking activities over and above protections that are already in place as a consequence of the State and Federal listings of the frogs. As a result, reductions in visitors and associated spending are not anticipated. We added a description of the importance of recreational fishing to the regional economy to the FEA.

(28) *Comment:* Several commenters are concerned about the economic impact to livestock and packstock grazing activities. One commenter states that the loss of use, or reduction in available use, of grazing allotments on National Forests would significantly impact the ranchers who currently depend on the livestock forage provided by Federal grazing allotments. Another commenter asserts that the designation will prevent ranchers from accessing and using existing property rights within federally controlled lands, including water rights, easements, rights-of-way, and grazing preferences within BLM and USFS grazing allotments designated as critical habitat. The commenter states that the DEA should include analysis of the economic effects of excluding ranching.

Our Response: The act of designating critical habitat does not summarily preclude access to any land, whether private, tribal, State or Federal. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Furthermore, designation of critical habitat does not affect land ownership, or establish any closures or any restrictions on use of or access to the designated areas through the designation process, nor does it establish specific land management standards or prescriptions, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. Finally, as discussed in section 4.2.3 of the DEA, the rulemaking is not anticipated to result in the loss of or reduction in grazing activities on Federal lands designated as critical habitat. This conclusion is consistent with discussions with USFS staff. Notably, USFS has routinely considered measures to protect the amphibians and their habitat since the three amphibians were designated as "Sensitive Species" in 1998. Consequently, we anticipate that the incremental cost of the designation is limited to the additional administrative effort incurred by USFS staff during consultation.

(29) *Comment:* Several commenters are concerned that the DEA does not use current and accurate data for its analysis of grazing impacts, and these commenters state that text and exhibits in chapter 4 of the DEA summarizing information related to grazing allotments by National Forests do not include information for the Humboldt-Toiyabe National Forest (HTNF). The commenters provide acreage, activity status, and animal use month numbers for allotments in HTNF within Sierra Nevada yellow-legged frog and Yosemite toad proposed critical habitat.

Our Response: Section 4.2.3 of the FEA has been updated to include grazing activities in HTNF. Specifically, we identify a total of seven grazing allotments in HTNF that overlap the designation. This new information affects the upper bound estimate, increasing the total incremental costs of the designation associated with grazing activities by a total of approximately $3,000, from $152,200 to $155,100.

(30) *Comment:* One commenter questions whether the DEA considered packstock operations in HTNF and in Inyo National Forest (INF). The commenter mentions six different pack operations in the two forests and gives service day numbers for these operations.

Our Response: Section 4.2.3 of the FEA has been updated to include the additional six packstock operations identified by the commenter in HTNF and INF. Specifically, this new information affects the upper bound estimate, increasing the total incremental costs of the designation associated with packstock grazing activities by a total $17,300, from $45,900 to $63,200.

(31) *Comment:* Multiple commenters express concern about the potential impacts of the designation on the region's tourism and recreation economy and highlight the importance of tourism and recreation to the region's economy.

Our Response: As discussed in chapter 4 of the DEA, the Service is unlikely to require additional conservation measures that would reduce or eliminate recreational activities within areas designated as critical habitat due solely to the designation of critical habitat. Because all areas designated as critical habitat are considered to be currently occupied, any changes in recreational activities on Federal lands are likely to occur even in the absence of the designation. We added a description of the importance of recreation to the regional economy in the FEA.

(32) *Comment:* One commenter states that timber harvests on private lands are also likely to be affected by the designation and expects that critical habitat designation will add additional costs to private timber harvest activities through additional monitoring requirements. Family forest landowners, of which there are 197,000 in California, operate their forests on very thin economic margins. Additional costs can make harvest uneconomical and lead to a huge loss in the economic value of the property.

Our Response: In section 4.2.5 of the DEA, we qualitatively discuss potential indirect impacts of stigma on private lands where past timber harvest activity has occurred. Timber harvest activities on private lands in California must comply with the California Forest Practice Rules (CFPR). The CFPR includes measures that provide significant baseline conservation benefits to the amphibians and their habitat within timber harvest areas on private lands. Given the extensive protection already required by State law and regulation, it is unlikely any new requirements will be imposed due solely to the designation of critical habitat.

(33) *Comment:* One commenter states that the fact that private property values would decline is not a "stigma"; it is a reality. As the Federal Government introduces regulatory burdens (in essence de facto "liens" against a property), the value goes down.

Our Response: Section 4.2.5 of the DEA discusses potential indirect impacts of stigma. We agree that stigma effects, if they occur, may result in real economic losses. All else equal, a property that is designated as critical habitat may have a lower market value than an identical property that is not within the boundaries of critical habitat due to the public's perception of limitations or restrictions. As the public becomes aware of the true regulatory burden imposed by critical habitat (*e.g.,* regulation under section 7 of the Act is unlikely), the impact of the designation on property markets may decrease. If stigma effects on markets were to occur, these impacts would be considered indirect, incremental impacts of the designation. Data limitations prevent the quantification of these effects.

(34) *Comment:* One commenter states that the DEA has not addressed the economic impact of foregone opportunities to manage vegetation and

cites declines in timber harvest levels on National Forests between the 1980s and present day and attributes these declines to the northern spotted owl (*Strix occidentalis caurina*) and subsequent standards for the California spotted owl (*Strix occidentalis occidentalis*). The commenter estimates a total economic jobs impact of $867 million annually in lost payroll. A 1.8-million acre critical habitat designation for the frogs and toad will have a significant economic impact that the economic analysis has failed to address. It is impossible to quantify the impacts because the proposed rule does not identify how much of the proposed designation is productive forest land.

Our Response: As discussed in chapter 4 of the DEA, the Service is unlikely to require additional conservation measures that would reduce or eliminate vegetation management activities within areas designated as critical habitat due solely to the designation of critical habitat. Because all areas we are designating as critical habitat are considered to be currently occupied, any changes in vegetation management activities on Federal lands are likely to occur even in the absence of the designation.

Moreover, the geographic overlap between amphibians (whose habitat is largely at higher elevations than most timber harvest activities) and managed forests is relatively minimal across the range of area we are designating as critical habitat. Exhibit 4–15 of the DEA identifies the critical habitat units where timber harvests are likely and, within each unit, the number of acres suitable for timber harvests. Specifically, these acres include: (1) Areas identified by USFS under Land Suitability Classes 1 and 2; (2) areas included in past timber harvest plans from 1997 to 2013; and (3) areas included in past non-industrial timber management plans from 1991 to 2013. Based on these criteria, the economic analysis identifies approximately 5,396 acres as suitable for timber harvest activities in seven critical habitat units.

(35) *Comment:* Several commenters are concerned that the critical habitat designation will impose limitations on fuel reduction projects. The commenters mention the recent Rim Fire in Tuolumne County, which burned over 257,000 acres primarily in the Stanislaus National Forest and cost over $127 million to get under control. Another commenter states that overgrown forests are far more likely to result in catastrophic wildfire and adversely modify habitat if fire management activities, such as water drafting, chemical retardant use, and construction of fuel breaks, are limited. Such fires would have devastating impacts to the frogs and economic impacts to communities.

Our Response: We agree with the commenter that catastrophic wildfires represent a direct threat to the species and their habitat. In the final listing rule, the Service discusses in more detail the complex relationship between the amphibians, their habitats, and fire (79 FR 24256; April 29, 2014). We updated the FEA to better recognize the threat that catastrophic fire poses to the species and their habitat and the positive role that fuels management can play in reducing the adverse effects of catastrophic fire.

Since the publication of the DEA, we released a programmatic biological opinion for forest programs in nine National Forests in the Sierra Nevada of California for the amphibians. The biological opinion provides information on conservation measures, including many derived from best management practices included in the 2004 Sierra Nevada Forest Plan Amendment. One such conservation measure suggests, "the use of prescribed fire or mechanical methods to achieve resource objectives to reduce flooding and erosion perturbations. This may be achieved by managing the frequency, intensity and extent of wildfire." Thus, we acknowledge the importance of managing wildfires as it relates to species and habitat conservation. Other conservation measures related to maintaining water quality and soil stability are also included.

(36) *Comment:* Multiple commenters state that the baseline conditions for fuel management and timber harvest as articulated in paragraphs 160–163 of the DEA are based on treatments over the last 5 to 10 years, a period of known reductions in fuel and timber harvest activities now recognized as a major cause of catastrophic wildfire. The commenters state that activity levels are currently well below that needed to sustain the forest environment, and these commenters expect fuel management and timber harvest activities to dramatically increase in the next few years. One commenter cites the USFS California Region's Ecological Restoration: Leadership Intent publication, which states that the USFS intends to perform forest health and fuels reduction treatments on up to 9 million acres of National Forest land over the next 15 to 20 years, which represents a three- to four-fold increase in current intensity of activity.

Our Response: According to communications with USFS and NPS staff (see discussion in section 4.2.4 of the DEA), fire management activities are infrequently implemented at the high elevations in wilderness areas where the amphibians are generally located. According to communications with USFS, based on the infrequent nature of fuels management activities in proposed critical habitat areas, as well as the repetitive nature of fuels management practices, staff anticipate pursuing a programmatic consultation for fuels management activities. As a result, the DEA forecasted one programmatic consultation for fuels management activities in 2014 (a consultation that has since been completed). As no historical fuels management activities were identified on NPS lands proposed as critical habitat, we do not forecast section 7 consultations associated with fuels management activities on NPS lands over the analysis period. To allocate the administrative costs of section 7 consultation across proposed critical habitat areas, this analysis relies on the number of acres in each affected unit classified as "wildland urban interface" (WUI). In the FEA, we add a discussion of the uncertainty associated with our forecast of the amount of fuels management activities likely to be undertaken in the future. Because USFS is addressing its section 7 consultation obligations through a single programmatic consultation, even if the degree of activity increases, impacts on forecast administrative costs are likely to be minimal.

(37) *Comment:* Multiple commenters state that the baseline WUI described in paragraph 163 of the DEA is inaccurate. The DEA does not estimate any WUI acres within the East Amador subunit (Subunit 2F), but, according to the commenters, this subunit includes the Bear River home track, Silver Lake home tracks, and numerous other private homes, all surrounded by WUIs. Additionally, Amador County is in the process of defining the WUIs in the forested areas through a community wildfire protection plan, which will likely define much of the area as WUI. The commenters ask whether community wildfire protection plans and USFS district rangers were included in the informational resources for WUI designations.

Our Response: As stated in section 4.2.4 of the DEA, our analysis of fire management activities was based on communication with USFS staff, who indicated that they would likely pursue a programmatic consultation for fuels management activities given the infrequent and repetitive nature of these activities. As stated in this section of the DEA, our analysis estimates that approximately 131,300 acres are classified as WUI within National Forest boundaries and the 15 critical habitat units and subunits where fuels management activities are identified as a threat. This analysis is based on WUI Geographic Information System (GIS) data available from Region 5 of the USFS. The commenter is correct that there are WUI acres in Subunit 2F. As a result of a transcription error, Exhibit 4–13 of the DEA indicates that there are no acres of WUI in Subunit 2F. The correct number of acres classified as WUI should be 34,485 acres for Subunit 2F. This error has been corrected in the FEA. The present value and annualized incremental impact values reported in the table in the FEA are correct. The $2,200 estimate is reached by multiplying the incremental administrative cost of a programmatic consultation by the ratio of WUI acres in subunit 2F to total WUI acres within proposed critical habitat (34,485/131,312 = 0.26).

(38) *Comment:* One commenter states that the designation will likely cause severe restrictions on land access and could limit or forbid mining.

Our Response: The act of designating critical habitat does not summarily preclude access to any land, whether private, tribal, State, or Federal. Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. Furthermore, designation of critical habitat does not affect land ownership, or establish any closures or any restrictions on use of or access to the designated areas through the designation process, nor does it establish specific land management standards or prescriptions, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat.

(39) *Comment:* One commenter states that the DEA does not analyze the impacts of the designation on the administration of connective waterways and adjoining lands. In particular, the commenter expresses concern that the designation will change the manner in which the Carson Water Subconservancy District's exercises its water rights to Lost Lakes, including its ability to release these waters to the West Fork of the Carson River.

Our Response: As discussed in chapter 4 of the DEA, the Service is unlikely to require additional conservation measures that would impact water management within areas we are designating as critical habitat due solely to the designation of critical habitat. Because all areas we are designating as critical habitat are considered to be currently occupied, any changes in water management activities on Federal lands are likely to occur even in the absence of the designation.

(40) *Comment:* One commenter states that Exhibit 4–3 of the DEA incorrectly indicates that the Big Creek Dam projects are located in Yosemite Toad Unit 4, and that these projects are not located in Mono County but are more likely located in Unit 14. This error is then carried through to economic impact calculations in Exhibit 4–21 of the DEA.

Our Response: The commenter is correct. According to the California Energy Commission's Hydroelectric Generation Facilities map, the Big Creek facilities are located in Fresno and Madera Counties. We have updated the FEA to reflect that consultation costs for these projects are now attributed to Unit 14 rather than Unit 4. This change does not affect the total incremental impacts estimated for water management activities.

(41) *Comment:* Several commenters object to the DEA's interpretation of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) and state that the Service is not excused from the consideration of economic impacts to small entities under section 4(b)(2) of the Act. One commenter states that the Federal agency must provide a factual basis for "no significant economic certification." According to the commenter, in the DEA, the factual basis for the certification is lacking. The commenter states that the Service ignored substantial information on the record documenting the probable impacts of the proposed designation on small businesses, small organizations, and small government jurisdictions in order to make the requisite certification under the RFA.

Our Response: Under the RFA, Federal agencies are only required to evaluate the potential incremental impacts of a rulemaking on directly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is the Service's position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule, as well as this final designation, will not have a significant economic impact on a substantial number of small entities. Because certification is possible, no initial or final regulatory flexibility analysis is required.

(42) *Comment:* One commenter states that the absence of quantitative economic benefits provides no reference point for comparative economic analysis. The commenter does not accept that, whatever the economic loss, compensation in biological returns will occur and states that, by using subjective determinations, the benefits will always outweigh the costs and the legitimate concerns of the affected parties are undermined, essentially making the DEA irrelevant.

Our Response: Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The DEA and updated FEA provide the best available estimate of the economic costs associated specifically with the designation. These costs may be evaluated against qualitative values, but also must be considered in the broader context of the mandates of the Act to conserve endangered species and designate as critical habitat those areas with the physical or biological features in need of special management considerations or protections that are essential to the species' conservation. Section 4(b)(2) of the Act states that the Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The designation of critical habitat must by law consider economic costs, but this is not the sole determinant of the final decision; that decision is not solely a cost-benefit analysis.

(43) *Comment:* One commenter states that the Service should better address the economic benefits of the critical habitat designation, including benefits to water quality, benefits to other rare

species, benefits to areas where people recreate, and health benefits that may accrue from better air or water quality. The commenter states that these benefits should be more clearly addressed qualitatively and, where possible, the value of these critical ecosystem services should be quantified.

Our Response: Chapter 5 of the DEA describes the economic benefits of the critical habitat designation. It is not possible to predict at this time what, if any, economic benefits will accrue solely as a result of critical habitat designation. Following the incremental cost approach, the designation of critical habitat is unlikely to result in ancillary benefits identified by the commenter, as these will already be in place as a consequence of listing the species. Regardless, as stated in the response to Comment (42), above, the economic analysis is not a traditional cost-benefit analysis necessitating full estimation and quantitative (or qualitative) evaluation of economic benefits to weigh against costs in order the provide the Secretary with the information needed to use her discretion in considering areas for section 4(b)(2) exclusion.

(44) *Comment:* We received several comments indicating that protections for the frogs and toad are already in place, and that critical habitat designation is unnecessary or will not help. Specifically, many mentioned CDFW already has a conservation program in place or that protections afforded by Wilderness Areas and NPS lands are sufficient.

Our Response: The Service is not relieved of its statutory obligation to designate critical habitat based on the contention that it is unnecessary or will not help the species. Moreover, we do not agree with the argument that specific areas and essential features within critical habitat do not require special management considerations or protection because adequate protections are already in place. In *Center for Biological Diversity* v. *Norton,* 240 F. Supp. 2d 1090 (D. Ariz. 2003), the court held that the Act does not direct us to designate critical habitat only in those areas where "additional" special management considerations or protection is needed. If any area provides the physical or biological features essential to the conservation of the species, even if that area is already well managed or protected, that area still qualifies as critical habitat under the statutory definition if special management is needed.

In the case of the ongoing aquatic biodiversity management planning (ABMP) process being conducted by CDFW, these plans remain incomplete, and the specific criteria applied during the decision process selecting protected native amphibian areas do not necessarily reflect the same ultimate conservation outcome that we are tasked to accomplish (*i.e.,* the conservation of the Sierra Nevada yellow-legged frog). We are currently collaborating with CDFW on a conservation strategy for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog. This strategy (as well as the CDFW's ABMPs) is not complete; therefore, conservation actions are not yet assured, and critical habitat designation is still required.

In the case of Wilderness Areas and NPS lands, these Federal lands remain as multiple-use resource areas, even though they offer a greater relative degree of protection when compared to National Forests without Wilderness status. Nonetheless, designation of critical habitat requires that Federal agencies consult with the Service to ensure their actions do not destroy or adversely modify critical habitat. While NPS in particular has an exemplary record in managing these species, even before listing, the designation of critical habitat and the consultation process will provide additional assurance that activities in these areas will not destroy or adversely modify the habitat of these species.

(45) *Comment:* We received many comments with concerns that we proposed designation of too much habitat, including numerous comments specifically questioning why aquatic-dependent species needed a critical habitat designation that is not solely comprised of wetland areas.

Our Response: We define critical habitat to the extent it is essential to conserve endangered or threatened species under the Act. Such species are in decline and their habitat is in need of protection, special management, and restoration in order to reverse population declines and reduce extinction risk. In determining the amount of habitat essential to conserve a species, we consider factors such as: The need for replicate occurrences of the species across the landscape; connectivity between habitat areas to allow movement, adaptation, and natural recolonization to offset localized losses; and sufficient populations safeguarded to preserve genetic and ecological diversity. The areas we are designating as critical habitat in this final rule contain the physical or biological features essential for the conservation of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in view of the factors above and the uncertainty of future habitat conditions as a result of climate change.

The inclusion of upland areas within critical habitat is to protect habitat areas required for normal metapopulation dispersal, habitat use, and recolonization of suitable habitat not currently containing the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad, and to protect the primary constituent elements of water quality and quantity (see our response to Comment (6), above). In addition, the Yosemite toad does utilize upland habitats extensively (see *Physical or Biological Features for the Yosemite Toad,* below).

(46) *Comment:* One commenter asked us to substantiate our critical habitat designations with population numbers.

Our Response: Critical habitat designation is not based on absolute abundances, and we also generally do not have nor require such data before designating critical habitat. Although we utilized the most up-to-date scientific information reflected in survey data from the last few decades (historic, plus extant localities since 1995), the protocols set up for these surveys did not include mark-recapture type techniques, which are required to assess actual abundances. We have raw count values from visual encounter surveys, which are helpful in establishing relative abundance, but not definitive population counts. Note also, at low abundances, visual encounter survey methods may miss extant populations due to low encounter probabilities. Also, while the survey coverage by USFS and CDFW is extensive, it is not exhaustive. This means it is very likely there are extant localities we have missed. Given all these considerations, we cannot provide absolute abundance data at the scale of each critical habitat subunit.

This critical habitat designation is based on the identification of specific areas within the geographical area occupied by the species at the time of listing that contain the physical or biological features essential for the conservation of the species. We also use a set of criteria to identify the geographic boundaries of the designation. A critical habitat designation does not require definitive data regarding abundances; such data are pertinent to the overall determination of whether a species is considered an endangered or threatened species under the Act. Regardless, we are required to use the best scientific data available to inform our critical habitat determination, and we have done so in this final designation for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad.

(47) *Comment:* One commenter submitted information regarding wetland pollution by livestock grazing and suggested the results of studies did not support large critical habitat designations for the Yosemite toad.

Our Response: We appreciate the additional information provided. Our critical habitat designations are based on multiple criteria, and the delineation of critical habitat for the Yosemite toad is based on the types of areas utilized by the toad during its varied lifestages and areas needed for dispersal and emigration in order to provide for the conservation of the species. Critical habitat designation is based upon the presence of physical or biological features required by the Yosemite toad, not on the relative degree of any given threat. Threats themselves are evaluated in the context of a listing decision.

(48) *Comment:* One commenter asked whether we utilized the California Wildlife Habitat Relationships (CWHR) model to derive proposed critical habitat.

Our Response: We did not use the CWHR range map to derive critical habitat. In the case of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog, a superior modeling tool was available in the form of a MaxEnt 3.3.3 model (see "(3) Habitat Unit Delineation" under *Sierra Nevada Yellow-Legged Frog and Northern DPS of the Mountain Yellow-legged Frog* in Criteria Used to Identify Critical Habitat, below), which CDFW had also utilized during their status evaluation (CDFW (formerly CDFG) 2011, pp. A–1—A–4). We used this base model along with other criteria as outlined below to define critical habitat. In the case of the Yosemite toad, we initially approached CDFW for their CWHR layer, but they informed us that it had not yet passed their own internal quality control review for reliability, and so we had to rely on other resources for defining the Yosemite toad's habitat. We have since received a range map from USFS, and we used that information as supplemental information to this final critical habitat designation.

(49) *Comment:* One commenter was concerned about the designation of Slate Creek as critical habitat and how it may affect suction dredge mining, and this commenter expressed an opinion that fish removal would be more effective at frog restoration than critical habitat designation.

Our Response: Critical habitat designation is necessary to identify areas, containing the physical or biological features that may require protection or special management considerations, in order to conserve an endangered or threatened species. It is true that fish removal is one potential restoration tool amongst a suite of possible actions. It does not follow, however, that all designated areas will involve such restoration measures. For any potential risk factors, including suction dredge mining, adverse modification to critical habitat will be analyzed through consultation on projects that have a Federal nexus, and these situations will be handled on a project-by-project basis, unless covered in a programmatic consultation process.

(50) *Comment:* We received several comments stating that critical habitat is not determinable because we cannot know where the fungal pathogen *Batrachochytrium dendrobatidis* (Bd) will spread, the magnitude of its dispersal, nor its persistence time in the environment of contaminated habitats. The commenters asserted, therefore, that no "safe" habitat exists for the species and critical habitat designation will not be helpful.

Our Response: We concur that there is scientific uncertainty regarding the rate of spread of Bd and its persistence in affected habitat areas. However, critical habitat designation does not target only "safe" habitats where species are expected to persist. Critical habitat designations cover the areas containing the physical or biological features that may require special management considerations and protection to allow for the conservation of the species. Critical habitat designation is based on the physical or biological features essential for the conservation of the species, not the absence of threat factors.

(51) *Comment:* We received several comments indicating we came close to violating 16 U.S.C. 1532(5)(C), which states that "critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species."

Our Response: 16 U.S.C. 1532(5)(C) states, "Except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species." We currently have the definitive range maps for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Frog ranges were derived using information received from the University of California at Santa Barbara Sierra Nevada Aquatic Research Lab, and the Yosemite toad's range was provided by USFS, recently updated by expert input. The historical range of the Sierra Nevada yellow-legged frog is nearly 6 million acres. The historical range of the northern DPS of the mountain yellow-legged frog is almost 1.2 million acres. The historical range of the Yosemite toad is greater than 2.6 million acres. In addition, we are aware of extant locations of these species outside of our critical habitat designations. Therefore, we did not propose, nor are we designating now, the entire geographical areas that could be occupied by the respective species.

(52) *Comment:* One commenter indicated that grazing is not a threat factor to the Yosemite toad, and, therefore, critical habitat for this species should be kept as small as possible around currently occupied areas.

Our Response: When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The criteria used to determine the extent of this area are based on whether such area contains the essential physical or biological features, among other factors. However, the presence of a particular threat factor is not a criterion by which the extent of the area is defined.

(53) *Comment:* We received a comment from Pacific Gas and Electric Company that we should exclude two reservoirs in subunit 1A for the Sierra Nevada yellow-legged frog. USFS also commented that these areas and acreage proximate to these reservoirs within the Lassen National Forest should be excluded because they are not occupied by Sierra Nevada yellow-legged frogs.

Our Response: Subsequent to the publication of the proposed critical habitat designation, CDFW indicated to us that two of our extant records of Sierra Nevada yellow-legged frogs in the watershed on the western portion of subunit 1A for the Sierra Nevada yellow-legged frog were erroneous. We deleted the localities from our database, and per the criteria used to designate critical habitat, these reservoirs and surrounding lands have been removed from subunit 1A. This change results in a reduction of approximately 6,057 ha (15,012 ac) in subunit 1A for Sierra Nevada yellow-legged frog.

(54) *Comment:* We received a comment from Pacific Gas and Electric Company that we exclude the Blue Lakes Unit from the Yosemite toad

critical habitat designation because it is a hybridization zone with western toad (*Anaxyrus boreas*).

Our Response: We are aware that the Blue Lakes Unit is within a zone of hybridization. Given the difficulty in differentiating the Yosemite toad from western toad (or, for that matter, either species from hybrids), and given that the presence of hybrids indicates that native genes are also extant within the area, removing the unit from critical habitat designation is not warranted. Despite hybridization, this area still meets the definition of critical habitat.

(55) *Comment:* We received one comment encouraging us to designate additional critical habitat for the northern DPS of the mountain yellow-legged frog. Specific areas identified included Breckenridge Mountain within the Giant Sequoia National Monument, and Taylor Meadow in the Sequoia National Forest, to effectively decrease the gap between the critical habitat units for the northern and southern DPS by 31 miles.

Our Response: The criteria we applied in determining critical habitat boundaries were based on the identification of specific areas with the physical or biological features essential to the conservation of the species, but also focused on areas with proximity to known, extant populations. The first reason for this approach is to protect important habitat areas (the areas containing physical or biological features requiring special management considerations and protection). This approach also works under the rationale that natural dispersal and recolonization in proximate areas is preferable to translocation, or captive propagation and reintroduction to restored historical habitat. While captive rearing and reintroduction can and may be utilized within an overall recovery effort for the respective species, this more detailed level of planning is not completed to date.

With regard to increasing connectivity between the southern DPS of the mountain yellow-legged frog and the northern DPS of the mountain yellow-legged frog, it is unclear if restoring connectivity between the DPSs will be an appropriate recovery target, because natural interchange is impossible and these metapopulations are discrete and significant, comprising different genetic clades.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occur, and conservation biology principles. We received responses from three of the five peer reviewers about our proposed critical habitat designation.

We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(56) *Comment:* Two peer reviewers noted that certain populations were not included in critical habitat. These included populations in the southwest portion of Sierra Nevada yellow-legged frog Clade 3 in the western Sierra National Forest (Lakecamp Lake and Ershim Meadow), and the peer reviewers suggested inclusion due to the ecological uniqueness of the habitat (as meadow/stream populations). Other locations not included were Upper and Lower Summit Meadows in Yosemite National Park, Calaveras Big Trees, and Birch Creek and Dry Creek/Crooked Meadows in the Inyo National Forest.

Our Response: We concur that these populations occur in ecologically unique habitats. For genetic clades with more extant metapopulations, we did not include every locality within the critical habitat designation. If populations were geographically removed, and opportunities for natural dispersal between occupied habitat are limited within such genetic clades, some of these populations were not included in the critical habitat designation (whereas other populations that were geographically closer and had natural dispersal between occupied habitat within such clades were included). Please refer also to our response to Comment (2), above.

(57) *Comment:* One peer reviewer indicated that the loss of populations from designated subunits would jeopardize the long-term viability of the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog, and, therefore, considerable research and management efforts focused upon fish eradications, frog translocations, reintroductions, and Bd treatments will be necessary to ensure the persistence of frog populations in some units or subunits.

Our Response: We concur that considerable research, restoration, and management efforts are critical to the conservation of both species of frogs. We anticipate that all mentioned elements will be central to the upcoming conservation strategy and future recovery plan.

(58) *Comment:* Two peer reviewers highlighted that the MaxEnt model used to delineate critical habitat may be biased toward high mountain lakes and underrepresent stream-based populations.

Our Response: We acknowledge these comments. One of the peer reviewers (Dr. Knapp, the developer of the model) indicated this bias is based on differences in survey intensity of lake versus stream habitats, but presumed the bias to be relatively small and ultimately unquantifiable. Subsequent review of our criteria as written for the proposed critical habitat designation indicates that we inadvertently omitted one aspect of our delineation methodology. Specifically, in stream-based populations, because Dr. Knapp had indicated that the MaxEnt model was potentially less reliable for streams, we utilized the 0.2 probability of occurrence in such systems, as opposed to the 0.4 threshold we utilized for lake-based delineations. This oversight has been amended in the narrative for the criteria outlined in this final critical habitat designation. This change in narrative is a clarification of methodology, and did not result in a change to any critical habitat boundaries.

(59) *Comment:* One peer reviewer noted two areas with relatively high toad abundances that were not included in the proposed Yosemite toad critical habitat: Headwaters of West Walker in the Humboldt-Toiyabe National Forest and meadows southwest of Volcanic Knob on the Sierra National Forest.

Our Response: We acknowledge and appreciate this comment. We did not include every known Yosemite toad locality in our proposed critical habitat designation, but rather we included those areas containing the physical or biological features that are essential to the conservation of the species. Please also refer to responses to Comments (2) and (3), above.

(60) *Comment:* One peer reviewer suggested that we split Sierra Nevada yellow-legged frog subunit 3B into three distinct units due the likelihood that this subunit is in fact comprised of clades 2 and 3, not simply clade 3 following Vredenburg *et al.* (2007).

Our Response: We concur that the most plausible genetic clade designations follow the peer reviewer's comment. However, the entirety of subunit 3B for the Sierra Nevada yellow-legged frog, as delineated, encompasses watersheds with mixed genetic lineage (clades 2 and 3), and, therefore, it was difficult to segregate one from the other without designating multiple subunits within an entirely contiguous area. This condition also holds for subunits 3C and 4C for the Sierra Nevada yellow-legged frog. Given that the regulatory protections for the actual lands are identical regardless of nomenclature, we opted for simplicity and kept subunits 3B and 3C as single subunits and numbered them for their predominant genetic clade per Vredenburg *et al.* (2007). For subunit 4C, we assigned the number based on the range map we used, which was developed and provided to us by the same peer reviewer. We are hopeful that future genetic studies elucidate the genetic lineage of each specific locale in these regions.

Summary of Changes From Proposed Rule

Based on comments we received following publication of the proposed critical habitat designation, we revised PCEs 1 and 2 for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog to better clarify the intent of the PCE language with respect to the presence of introduced fish within critical habitat. It was clear from public and agency input that readers misinterpreted what we meant regarding PCE 1. We intended to say that PCE 1 (aquatic breeding habitat) ideally should not have introduced fishes present, but that introduced fishes may be present in PCE 2. Given that an area only has to have one physical or biological feature present to meet the definition of critical habitat, areas that have fish present are still considered critical habitat if they meet PCE 2. Therefore, we did not intend to imply that areas have to be "free of fish" to be critical habitat. The specific changes include: Clarification regarding the "fishless" component within PCE 1 (aquatic breeding habitat) and a typographical error within PCE 2 (non-breeding aquatic habitat) to clarify that prey base was meant to sustain juvenile and adult frogs intermittently using this habitat (not tadpoles). Other updates since our last proposed rule include adding the known manageable threat of fish persistence and stocking for the Northern DPS of the mountain yellow-legged frog for critical habitat units 4A Frypan Meadows, 4B Granite Basin, 4C Sequoia Kings, 4D Kaweah River, and 5A Blossom Lakes to Table 6. In addition, the known threats that may affect the essential physical or biological features identified for the critical habitat units for the Yosemite toad have been updated since our last proposed rule and the adjustments are included in the Threats column of Table 7. We have also included minor corrections or clarifications following our peer reviewer comments. We provide the full revised PCEs below.

Additionally, based on comments received from the public, State and Federal agencies, and the peer reviewer who developed the habitat model used in part to identify areas with the requisite physical or biological features, we have reevaluated our criteria for determining critical habitat. This reevaluation has resulted in the reduction of the number of sites included in this final critical habitat designation for the Sierra Nevada yellow-legged frog because current habitat conditions were not reflected in our original analysis (see "(4) Additional Criteria Applied to Final Critical Habitat Designation for Sierra Nevada Yellow-legged Frog" under *Sierra Nevada Yellow-Legged Frog and Northern DPS of the Mountain Yellow-legged Frog* in Criteria Used to Identify Critical Habitat, below). Therefore, we are not finalizing designation of some sites that we proposed for critical habitat designation the Sierra Nevada yellow-legged frog (see Table 2, below). We are also not finalizing 6,057 ac (15,012 ha) in subunit 1A because of information we received from CDFW regarding occupancy of the proposed subunit (see Comment (53), above). In total, these changes result in a reduction of approximately 9,412 ha (23,253 ac) in the critical habitat designation for the Sierra Nevada yellow-legged frog from what we proposed for this species (see Table 2, below). The boundaries of critical habitat designations for the northern DPS of the mountain yellow-legged frog and the Yosemite toad remain the same as what we proposed. Finally, we are changing the name of Subunit 2F from Squaw Ridge to East Amador. A full list of designated units and subunits is provided below (see Tables 1, 3, and 4). In the incremental effects memorandum, we indicated that we did not anticipate a substantial number of consultations that would result in adverse modification from the designation of critical habitat and, therefore, we did not anticipate a substantial difference in administrative effort to analyze projects that include critical habitat from those that would only include the species. In reducing the area of final critical habitat for the Sierra Nevada yellow-legged frog, and maintaining the area proposed for critical habitat within the final designations for the northern DPS of the mountain yellow-legged frog and Yosemite toad, we believe the economic impacts to Federal agencies remain small and insignificant.

The known manageable threat of fish persistence and stocking has been identified for the Northern DPS of the mountain yellow-legged frog for critical habitat units 4AFrypan Meadows, 4B Granite Basin, 4C Sequoia Kings, 4D Kaweah River, and 5A Blossom Lakes since our last proposed rule.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome. On February 11, 2016, we published a final rule in the **Federal Register** (81 FR 7413) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on March 14, 2016, but, as stated in that rule, the amendments it sets forth apply to "rules for which a proposed rule was published after March 14, 2016." We published our proposed critical habitat designation for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad on April 25, 2013 (78 FR 24516); therefore, the amendments set forth in the February 11, 2016, final rule at 81 FR 7413 do not apply to this final designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad from studies of these species' habitat, ecology, and life history as described in the proposed rule to designate critical habitat published in the **Federal Register** on April 25, 2013 (78 FR 24516), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on April 29, 2014 (79 FR 24256). Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Physical or Biological Features for the Sierra Nevada Yellow-Legged Frog and the Northern DPS of the Mountain Yellow-Legged Frog

We have determined that the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog (hereafter referred to collectively as mountain yellow-legged frogs) require the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Mountain yellow-legged frogs are highly aquatic (Stebbins 1951, p. 340; Mullally and Cunningham 1956, p. 191; Bradford *et al.* 1993, p. 886). Although they tend to stay closely associated with high-elevation water bodies, they are capable of longer distance travel, whether along stream courses or over land in between breeding, foraging, and overwintering habitat within lake complexes. Individuals may use different water bodies or different areas within the same water body for breeding, foraging, and overwintering (Matthews and Pope 1999, pp. 620–623; Wengert 2008, p. 18). Within water bodies, adults and tadpoles prefer shallower areas and shelves (Mullally and Cunningham 1956, p. 191; Jennings and Hayes 1994, p. 77) with solar exposure (features rendering these areas warmer (Bradford 1984, p. 973), which also make them more suitable as prey species). High-elevation habitats tend to have lower relative productivity (suggesting populations are often resource limited); therefore, sufficient space is also needed to avoid competition with other frogs and tadpoles for limited food resources.

Therefore, based on the information above, we identify high-elevation water bodies and adjacent lands within and proximate to water bodies utilized by extant frog metapopulations (mountain lakes and streams) to be a physical or biological feature needed by mountain yellow-legged frogs to provide space for their individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Adult mountain yellow-legged frogs are thought to feed preferentially upon terrestrial insects and adult stages of aquatic insects while on the shore and in shallow water (Bradford 1983, p. 1171); however, feeding studies on mountain yellow-legged frogs in the Sierra Nevada are limited. Remains found inside the stomachs of mountain yellow-legged frogs in southern California represented a wide variety of invertebrates, including beetles, ants, bees, wasps, flies, true bugs, and dragonflies (Long 1970, p. 7). Larger frogs have been observed to eat more aquatic true bugs (Order Hemiptera) (Jennings and Hayes 1994, p. 77). Adult mountain yellow-legged frogs have also been found to eat Yosemite toad tadpoles (Mullally 1953, p. 183; Zeiner *et al.* 1988, p. 88) and Pacific treefrog tadpoles (Pope 1999b, pp. 163–164), and they are also cannibalistic (Heller 1960, p. 127; Vredenburg *et al.* 2005, p. 565).

Mountain yellow-legged frog tadpoles graze on benthic detritus, algae, and diatoms along rocky bottoms in streams, lakes, and ponds (Bradford 1983, p. 1171; Zeiner *et al.* 1988, p. 88). Tadpoles have also been observed cannibalizing eggs (Vredenburg 2000, p. 170) and feeding on the carcasses of dead metamorphosed frogs (Vredenburg *et al.* 2005, p. 565). Other species may compete with frogs and tadpoles for limited food resources. Introduced fishes are the primary competitors, reducing the available prey base for mountain yellow-legged frogs (Finlay and Vredenburg 2007, p. 2187).

The ecosystems utilized by mountain yellow-legged frogs have inherent community dynamics that sustain the food web. Habitats, therefore, must maintain sufficient water quality to sustain the frogs within the tolerance range of healthy individual frogs, as well as acceptable ranges for maintaining the underlying ecological community. These key physical parameters include pH, temperature, nutrients, and uncontaminated water. The high-elevation habitats that support mountain yellow-legged frogs require sufficient sunlight to warm the water where they congregate, and to allow subadults and adults to sun themselves.

Persistence of frog populations is dependent on a sufficient volume of water feeding into their habitats to provide the aquatic conditions necessary to sustain multiyear tadpoles through metamorphosis. This makes the hydrologic basin (or catchment area) a critical source of water for supplying downgradient habitats. The catchment area sustains water levels in lakes and streams used by mountain yellow-legged frogs via surface and ground water transport, which are crucially important for maintaining frog habitat.

Therefore, based on the information above, we identify sufficient quantity and quality of source waters that support habitat used by mountain yellow-legged frogs (including the balance of constituents to support a sustainable food web with a sufficient prey base), absence of competition from introduced fishes, exposure to solar radiation, and shallow (warmer) areas or shelves within ponds or pools to be a physical or biological feature needed by mountain yellow-legged frogs to provide for their nutritional and physiological requirements.

Cover or Shelter

Mountain yellow-legged frogs require conditions that allow for overwinter survival, including lakes or pools within streams that do not freeze to the bottom, or refugia within or adjacent to such systems (such as underwater crevices) so that overwintering tadpoles and frogs do not freeze or experience anoxic conditions during their winter dormancy period (Bradford 1983, pp. 1173–1179; Matthews and Pope 1999, pp. 622–623; Pope 1999a, pp. 42–43; Vredenburg *et al.* 2005, p. 565). Cover for adults to protect themselves from terrestrial and avian predators is also an important habitat feature, especially in cases where aquatic habitat itself does not provide adequate protection from terrestrial or avian predators due to insufficient water depth. Although cover within aquatic habitat may be important in the short term to avoid fish predation, the observation of low coexistence between introduced trout and frog populations (Knapp 1996, pp. 1–44) suggests that cover alone is insufficient to preclude extirpation by fish predation.

Therefore, based on the information above, we identify refuge from lethal overwintering conditions (freezing and anoxia), and physical cover from aquatic, avian, and terrestrial predators to be a physical or biological feature needed by the mountain yellow-legged frog.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Mountain yellow-legged frogs are known to utilize habitats differently depending on season (Matthews and Pope 1999, pp. 620–623; Wengert 2008, p. 18). Reproduction and rearing require water bodies (or adequate refugia) that are sufficiently deep that they do not dry out in summer or freeze through in winter (except infrequently). Therefore, the conditions within the catchment for these habitats must be maintained such that sufficient volume and timing of snowmelt and adequate transport of precipitation to these rearing water bodies sustain the appropriate balance of conditions to maintain mountain yellow-legged frog's life-history needs. Conditions that determine the depth, siltation rates, or persistence of these water bodies (including sufficient perennial water at depths that do not freeze overwinter) are key determinants of habitat functionality (within tolerance ranges of each particular system). Finally, pre-breeding adult frogs need access to these water bodies in order to utilize resources available within nonbreeding habitat.

Therefore, based on the information above, we find the persistence of breeding and rearing habitats and access to and from seasonal habitat areas (whether via aquatic or terrestrial migration) to be a physical or biological feature needed by the mountain yellow-legged frog to allow successful reproduction and development of offspring.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

In addition to migration routes (areas that provide back and forth between habitat patches within the metapopulation) without impediments across the landscape between proximal ponds within the ranges of functional metapopulations, mountain yellow-legged frogs require dispersal corridors (areas for recolonization and range expansion) to reestablish populations in extirpated areas within its current range to provide ecological and geographic resiliency (U.S. Forest Service *et al.* 2015, p. 35). Maintenance and reestablishment of such populations across a diversity of ecological landscapes is necessary to provide sufficient protection against changing environmental circumstances (such as climate change). This provides functional redundancy to safeguard against stochastic events (such as wildfires), but this redundancy also may be necessary as different regions or microclimates respond to changing climate conditions.

Establishing or maintaining populations across a broad geographic area spreads out the risk to individual populations across the range of the species, thereby conferring species resilience. Finally, protecting a wide range of habitats across the occupied range of the species simultaneously maintains genetic diversity of the species, which protects the underlying integrity of the major genetic clades (Vredenburg *et al.* 2007, pp. 370–371), whose persistence is important to the ecological fitness of these species as a whole (Allentoft and O'Brien 2010 pp. 47–71; Johansson *et al.* 2007, pp. 2693–2700).

Therefore, based on the information above, we identify dispersal routes (generally fish free), habitat connectivity, and a diversity of high-quality habitats across multiple watersheds throughout the geographic extent of the species' ranges and sufficiently representative of the major genetic clades to be a physical or biological feature needed by the mountain yellow-legged frog.

Primary Constituent Elements for Sierra Nevada Yellow-Legged Frog and the Northern DPS of the Mountain Yellow-Legged Frog

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog are:

(1) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(a) For lakes, be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 m (5.6 ft), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(b) Maintain a natural flow pattern, including periodic flooding, and have functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(c) Be free of introduced predators.

(d) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(e) Contain:

(i) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(ii) Shallower microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(iii) Open gravel banks and rocks or other structures projecting above or just beneath the surface of the water for adult sunning posts;

(iv) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators; and

(v) Sufficient food resources to provide for tadpole growth and development.

(2) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(a) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(b) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(c) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators;

(d) Sufficient food resources to support juvenile and adult foraging;

(e) Overwintering refugia, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within bedrock, in and near shore; and/or

(f) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(3) *Upland areas.*

(a) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(i) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(ii) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(iii) For areas between proximate (within 300 m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

(iv) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

(b) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

Physical or Biological Features for the Yosemite Toad

We have determined that the Yosemite toad requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The Yosemite toad is commonly associated with wet meadow habitats in the Sierra Nevada of California. It occupies aquatic, riparian, and upland habitat throughout a majority of its range. Suitable habitat for the Yosemite toad is created and maintained by the natural hydrologic and ecological processes that occur within the aquatic breeding habitats and adjacent upland areas. Yosemite toads have been documented breeding in wet meadows and slow-flowing streams (Jennings and Hayes 1994, pp. 50–53), shallow ponds, and shallow areas of lakes (Mullally 1953, pp. 182–183). Upland habitat use varies among the different sexes and life stages of the toad (Morton and Pereyra 2010, p. 391); however, all Yosemite toads utilize areas within 1.5 km (0.9 mi) of breeding sites for foraging and overwintering, with juveniles predominantly overwintering in close proximity to breeding areas (Martin 2008, p. 154; Morton and Pereyra 2010, p. 391; Liang *et al.* 2010, p. 6).

Yosemite toads must be able to move between aquatic breeding habitats, upland foraging sites, and overwintering areas. Yosemite toads have been documented to move as far as 1.26 km (0.78 mi) between breeding and upland habitats (Liang 2010, p. ii). Based on observational data from three previous studies, Liang *et al.* (2010, p. 6) estimated the maximum travel distance for the Yosemite toad to be 1.5 km (0.9 mi). Upland habitat used for foraging includes lush meadows with herbaceous vegetation (Morton and Pereyra 2010, p. 390), alpine-dwarf scrub, red fir, lodgepole pine, and subalpine conifer vegetation types (Liang 2010, p. 81), and the edges of talus slopes (Morton and Pereyra 2010, p. 391).

Therefore, based on the information above, we identify both lentic (still) and lotic (flowing) water bodies, including meadows, and adjacent upland habitats with sufficient refugia (for example, logs, rocks) and overwintering habitat that provide space for normal behavior to be a physical or biological feature needed by Yosemite toads for their individual and population growth and for normal behavior.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Little is known about the diet of Yosemite toad tadpoles. However, their diet presumably approximates that of related *Anaxyrus* species, and likely consists of microscopic algae, bacteria, and protozoans. Given their life history, it is logical to presume they are opportunistic generalists. Martin (1991, pp. 22–23) reports tadpoles foraging on detritus and plant materials (algae), but also identifies Yosemite toad tadpoles as potential opportunistic predators, having observed them feeding on the larvae of Pacific chorus frog and predaceous diving beetle, which may have been dead or live. The adult Yosemite toad diet comprises a large variety of insects, with Hymenoptera (ants, wasps, bees, sawflies, horntails) comprising the largest proportion of the summer prey base (Martin 1991, pp. 19–22).

The habitats utilized by the Yosemite toad have inherent community dynamics that sustain the food web. Habitats also must maintain sufficient water quality and moisture availability to sustain the toads throughout their life stages, so that key physical parameters within the tolerance range of healthy individual frogs, as well as acceptable ranges for maintaining the underlying ecological community, are maintained. These parameters include, but are not limited to, pH, temperature, precipitation, slope, aspect, vegetation, and lack of anthropogenic contaminants at harmful concentrations. Yosemite toad locations are associated with low slopes, specific vegetation types (wet meadow, alpine-dwarf shrub, montane chaparral, red fir, and subalpine conifer), and certain temperature regimes (Liang and Stohlgren 2011, p. 217).

Therefore, based on the information above, we identify sufficient quantities and quality of source waters, adequate prey resources and the balance of constituents to support the natural food web, low slopes, and specific vegetation communities to be a physical or biological feature needed by Yosemite toads to provide for their nutritional and physiological requirements.

Cover or Shelter

When not actively foraging, Yosemite toads take refuge under surface objects, including logs and rocks (Stebbins 1951, pp. 245–248; Karlstrom 1962, pp. 9–10), and in rodent burrows (Liang 2010, p. 95). Thus, areas of shelter interspersed with other moist environments, such as seeps and springs, are necessary. Yosemite toads also utilize rodent burrows (Jennings and Hayes 1994, pp. 50–53), as well as cover under surface objects and below willows, for overwintering (Kagarise Sherman 1980, pers. obs., as cited in Martin 2008, p. 158).

Therefore, based on the information above, we identify surface objects, rodent burrows, and other cover or overwintering areas to be a physical or biological feature needed by the Yosemite toad to provide cover and shelter.

Sites for Breeding, Reproduction or Rearing (or Development) of Offspring

Yosemite toads are prolific breeders that lay their eggs at snowmelt. Suitable breeding and embryonic rearing habitat generally occurs in very shallow water of subalpine lentic and lotic habitats, including wet meadows, lakes, and small ponds, as well as shallow spring channels, side channels, and sloughs. Eggs typically hatch within 4 to 6 days (Karlstrom 1962, p. 19), with rearing through metamorphosis taking approximately 5 to 7 weeks after eggs are laid (U.S. Forest Service *et al.* 2015, p. 250). These times can vary depending on prey availability, temperature, and other abiotic factors.

The suitability of breeding habitat may vary from year to year due primarily to the amount of precipitation and local temperatures. Given the variability of habitats available for breeding, the high site-fidelity of breeding toads, an opportunistic breeding strategy, as well as the use of lotic systems, Yosemite toads require a variety of aquatic habitats to successfully maintain populations.

Therefore, based on the information above, we identify both lentic and slow-moving lotic aquatic systems that provide sufficient temperature for hatching and that maintain sufficient water for metamorphosis (a minimum of 5 weeks) to be a physical or biological feature needed by the Yosemite toad to allow for successful reproduction and development of offspring.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

In addition to migration routes without impediments between upland areas and breeding locations across the landscape, Yosemite toads require dispersal corridors to utilize a wide range of breeding habitats in order to provide ecological and geographic resiliency in the face of changing environmental circumstances (for example, climate). This provides functional redundancy to safeguard against stochastic events, such as wildfires, but also may be necessary as different regions or microclimates respond to changing climate conditions. Maintaining populations across a broad geographic extent also reduces the risk of a stochastic event that extirpates multiple populations across the range of the species, thereby conferring species resilience. Finally, protecting a wider range of habitats across the occupied range of the species can assist in maintaining the genetic diversity of the species.

Therefore, based on the information above, we identify dispersal routes, habitat connectivity, and a diversity of habitats throughout the geographic extent of the species' range that sufficiently represent the distribution of the species (including inherent genetic diversity) to be a physical or biological feature needed by the Yosemite toad.

Primary Constituent Elements for the Yosemite Toad

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Yosemite Toad are:

(1) *Aquatic breeding habitat.* (a) This habitat consists of bodies of fresh water, including wet meadows, slow-moving streams, shallow ponds, spring systems, and shallow areas of lakes, that:

(i) Are typically (or become) inundated during snowmelt;

(ii) Hold water for a minimum of 5 weeks, but more typically 7 to 8 weeks; and

(iii) Contain sufficient food for tadpole development.

(b) During periods of drought or less than average rainfall, these breeding sites may not hold surface water long enough for individual Yosemite toads to complete metamorphosis, but they are still considered essential breeding habitat because they provide habitat in most years.

(2) *Upland areas.* (a) This habitat consists of areas adjacent to or surrounding breeding habitat up to a distance of 1.25 km (0.78 mi) in most cases (that is, depending on surrounding landscape and dispersal barriers), including seeps, springheads, talus and boulders, and areas that provide:

(i) Sufficient cover (including rodent burrows, logs, rocks, and other surface objects) to provide summer refugia,

(ii) Foraging habitat,

(iii) Adequate prey resources,

(iv) Physical structure for predator avoidance,

(v) Overwintering refugia for juvenile and adult Yosemite toads,

(vi) Dispersal corridors between aquatic breeding habitats,

(vii) Dispersal corridors between breeding habitats and areas of suitable summer and winter refugia and foraging habitat, and/or

(viii) The natural hydrologic regime of aquatic habitats (the catchment).

(b) These upland areas should also maintain sufficient water quality to provide for the various life stages of the Yosemite toad and its prey base.

With this designation of critical habitat, we identify the physical or biological features and their associated PCEs that support the life-history processes essential to the conservation of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

The features essential to the conservation of the Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog may require special management considerations or protection to reduce the following threats: The persistence of introduced trout populations in essential habitat; the risks related to the spread of pathogens; the effects from water withdrawals and diversions; impacts associated with timber harvest and fuels reduction activities; impacts associated with inappropriate livestock grazing; and intensive use by recreationists, including packstock camping and grazing.

Conservation actions that could ameliorate the threats described above include (but are not limited to) nonnative fish eradication; installation of fish barriers; modifications to fish stocking practices in certain water bodies; physical habitat restoration; and responsible management practices covering potentially incompatible activities, such as timber harvest and fuels management, water supply development and management, inappropriate livestock grazing, packstock grazing, and other recreational uses. These management practices will protect the PCEs for the mountain yellow-legged frog by reducing the stressors currently affecting population viability. Additionally, management of critical habitat lands will help maintain the underlying habitat quality, foster recovery, and sustain populations currently in decline.

The features essential to the conservation of the Yosemite toad may require special management considerations or protection to reduce the following threats: Impacts associated with timber harvest and fuels reduction activity; impacts associated with inappropriate livestock grazing; the spread of pathogens; and intensive use by recreationists, including packstock camping and grazing.

Management activities that could ameliorate the threats described above include (but are not limited to) physical habitat restoration and responsible management practices covering potentially incompatible beneficial uses such as timber harvest and fuels management, water supply development and management, livestock and packstock grazing, and other recreational uses. These management activities will protect the PCEs for the Yosemite toad by reducing the stressors currently affecting population viability. Additionally, management of critical habitat lands will help maintain or enhance the necessary environmental components, foster recovery, and sustain populations currently in decline.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations, we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If, after identifying currently occupied areas, we determine that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations, we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are not designating any areas outside the geographical area occupied by the species because occupied areas are sufficient for their conservation.

We are designating critical habitat units that we have determined based on the best scientific data available are known to be currently occupied and contain the primary constituent elements of the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and the Yosemite toad (under section 3(5)(A)(i) of the Act). These species exhibit a metapopulation life-history model, and although they tend towards high site-fidelity, individuals within these populations can and do move through suitable habitat to take advantage of changing conditions. Additional areas outside the aquatic habitat within each unit or subunit were incorporated to assist in maintaining the hydrology of the aquatic features and to recognize the importance of dispersal between populations. In most instances, we aggregated areas we knew to be occupied, together with areas needed for hydrologic function and dispersal, into single units or subunits as described at 50 CFR 424.12(d) of our regulations. However, not all areas within each unit are being used by the species at all times, because, by definition, individuals within metapopulations move in space and time.

For the purposes of this final rule (as in our proposed rule), we equate the geographical area occupied at the time of listing with the current range for each of the species (50 CFR 424.12). Therefore, we are designating specific areas within the geographical area occupied at the time of listing (see criteria below) on which are found those physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection pursuant to section 3(5)(A)(i) of the Act. Within the current range of the species, based on the best scientific data available, some watersheds may or may not be actively utilized by extant frog or toad populations, but we consider these areas to be occupied at the scale of the geographic range of the species. We use the term "utilized" to refer to the finer geographic scale at the watershed or survey locality level of resolution when the species actively uses the area.

For this final rule, we completed the following basic steps to delineate critical habitat (specific methods follow below):

(1) We compiled all available data from observations of Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad;

(2) We identified, based on the best scientific data available, populations that are extant at the time of listing (current) versus those that are extirpated;

(3) We identified areas containing the components comprising the physical or biological features that may require special management considerations or protection;

(4) We circumscribed boundaries of potential critical habitat units based on the above information; and

(5) We removed, to the extent practicable, all areas that did not have the specific the physical or biological feature components, and therefore are not considered essential to the conservation of the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad.

(6) Following receipt of additional information from public comments along with those from USFS and CDFW, we reevaluated a number of sites in the proposed designation for the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog. The re-evaluation was necessary because the MaxEnt 3.3.3e model we used to derive the proposed critical habitat designation was based on historical habitat conditions that did not reflect current habitat conditions and land use of these sites (Knapp 2013). This information has bearing on the restoration potential of such areas. Although the model limitations applied to both frog species, none of the additional criteria used to filter the aquatic habitats within the range of the northern DPS of the mountain yellow-legged frog (see following) suggested or supported change from the proposed designation for the northern DPS of the mountain yellow-legged frog. By comparison, our reevaluation did result in a reduction of sites from the proposed designation for the Sierra Nevada yellow-legged frog. All further discussion on the additional analysis (see "(4) Additional Criteria Applied to Final Critical Habitat Designation for Sierra Nevada Yellow-legged Frog," below) only affects the final critical habitat designation for the Sierra Nevada yellow-legged frog.

Specific criteria and methodology used to determine critical habitat unit boundaries are discussed by species below.

Sierra Nevada Yellow-Legged Frog and Northern DPS of the Mountain Yellow-Legged Frog

We are treating these two species as similar in habitat and behavior.

(1) Data Sources

We obtained observational data from the following sources to include in our Geographic Information System (GIS) database for mountain yellow-legged frog: (a) Surveys of the National Parks within the range of the mountain yellow-legged frog, including information collected by R. Knapp's Sierra Lakes Inventory Project, and G. Fellers; (b) CDFW High Mountain Lakes Project survey data; (c) Sierra Nevada Amphibian monitoring program (SNAMPH) survey data from USFS; and (d) unpublished data collected by professional biologists during systematic surveys. Collectively, our survey data spanned August 1993 through September 2010. We cross-checked our database against the California Natural Diversity Data Base (CNDDB) reports, and we opted to utilize the above sources in lieu of the CNDDB data, due to the systematic nature of the surveys and their inherent quality control.

(2) Occurrence Criteria

We considered extant all localities where presence of living mountain yellow-legged frog has been confirmed since 1995, unless the last three (or more) consecutive surveys have found no individuals of any life stage. The 1995 cutoff date was selected because it reflects a logical break point given the underlying sample coverage and relatively long lifespan of the frogs and is consistent with the recent status evaluation by CDFW, and is therefore consistent with trend analyses compiled as part of that same effort (CDFW (formerly CDFG) 2011, pp. 17–25). We considered the specific areas within the currently occupied geographic range of the species that include all higher-quality habitat (see "(3) Habitat Unit Delineation," below) that is contiguous to extant mountain yellow-legged frog populations. To protect remnant populations, areas where surveys confirmed the presence of mountain yellow-legged frog using the criteria above were generally considered necessary to conservation, including: All hydrologically connected waters within a distance of 3 km (1.9 mi), all areas overland within 300 m (984 ft) of survey locations, and the remainder of the watershed upgradient of that location. The 3-km (1.9-mi) boundary was derived from empirical data recording frog movements using radiotelemetry (see derivation below). Watersheds containing the physical or biological features (as indicated by the MaxEnt Model), and with multiple and repeated positive survey records spread throughout the habitat area, were completely included. If two subareas within adjacent watersheds (one utilized, and one not known to be utilized) had contiguous high-quality habitat, the area was included up to approximately 3 km (1.9 mi) of the survey location. These areas are considered essential to the conservation of the species, because they are presumed to be within the dispersal capacity of extant frog metapopulations or their progeny.

Two detailed movement studies using radio telemetry have been completed for mountain yellow-legged frogs from which movement and home range data may be derived. One of the studies, focused on the mountain yellow-legged frog, occurred in a lake complex in Dusy Basin in Kings Canyon National Park (Matthews and Pope 1999, pp. 615–624). The other study included a stream-dwelling population of what was, at the time, identified as the Sierra Nevada yellow-legged frog in Plumas County, California (Wengert 2008, pp. 1–32). While recent information suggests that at least some of the frogs in the Wengert study may have actually been foothill yellow-legged frog (*Rana boylii*) (Poorten *et al.* 2013, p. 4), we expect that the movement distances recorded are applicable to the Sierra Nevada yellow-legged frog within a stream-based system, because the ecology is comparable between the two similar taxa in regard to stream systems. The movement patterns of the mountain yellow-legged frog within the lake complex included average distances moved within a 5-day period ranging from 43–145 m (141–476 ft) (Matthews and Pope, 1999, p. 620), with frogs traveling greater distances in September compared to August and October. This period reflects foraging and dispersal activity during the pre-wintering phase. Estimated average home ranges from this study ranged from 53 square meters (174 square ft) in October to more than 5,300 square meters (0.4 ac) in September (Matthews and Pope 1999, p. 620). The stream telemetry study recorded movement distances from 3–2,300 m (10–7,546 ft) (average was 485 m (1,591 ft)) within a single season (July through September), with as much as 3,300 m (10,827 ft) of linear stream habitat utilized by a single frog across seasons (Wengert 2008, p. 11). Home ranges in this study were estimated at 167,032 square meters (12.6 ac).

The farthest reported distance of a mountain yellow-legged frog from water is 400 m (1,300 ft) (Vredenburg *et al.* 2005, p. 564). Frogs within habitat connected by lake networks or migration corridors along streams exhibit greater movement and home range. Frogs located in a mosaic of fewer lakes or with greater distances between areas with high habitat value are not expected to move as far over dry land. We used values within the range of empirical data to derive our boundaries, but erred towards the maxima, for reasons explained below.

These empirical results may not necessarily be applied across the range of the mountain yellow-legged frog. It is likely that movement is largely a function of the underlying habitat mosaic particular to each location. Available data are limited to the two studies of different species spanning distinct habitat types. Therefore, generalizations across the range may not be inaccurate; however, two points are evident. First, although mountain yellow-legged frogs are known to be highly associated with aquatic habitat and to exhibit high site-fidelity (Stebbins 1951, p. 340; Mullally and Cunningham 1956, p. 191; Bradford *et al.* 1993, p. 886; Pope 1999a, p. 45), they do have the capacity to move relatively large distances, even within a single season. Our criteria for deriving critical habitat units, therefore, must take into account not only dispersal behavior and home range, but also consider the underlying habitat mosaic (and site-specific data, where available) when defining final boundaries for critical habitat.

Another factor to consider when estimating home ranges from point samples is encounter probability within the habitat range (whether the point location where the surveyed frog is observed is at the center or edge of a home range). It is more likely that surveys will encounter individuals in their preferred habitat areas, especially when point counts are attributed to main lakes (and during the height of the breeding season or closer to the overwintering season). Nevertheless, the full extent of actual utilized habitat may be removed in time and space from the immediate area defined by point locations identified during one-time surveys. The underlying uncertainty associated with point encounters means that it is difficult, and possibly inaccurate, to utilize bounded home ranges from empirical data when you lack site-specific information regarding habitat use about the surveyed sample unit. Additionally, emigration and recolonization of extirpated sites require movement through habitat across generations, which may venture well beyond estimated single-season home ranges or movement distances. Therefore, the estimates from the very limited field studies are available as guidelines, but we also use the nature and physical layout of underlying habitat features (or site-specific knowledge, where available) to better define critical habitat units.

Finally, results from studies conducted in single localities should be considered estimates. Measured distance movements and estimated home ranges from limited studies should not be the sole determinants in habitat unit delineation. The ability of frogs to move along suitable habitat corridors should also be considered. This is especially significant in light of the need for dispersal and recolonization of unoccupied habitat as the species recovers from declines resulting from fish stocking and the spread of Bd. It is evident from the data that frogs can, over the course of a season (and certainly over a lifespan), move through several kilometers of habitat (if the intervening habitat is suitable).

Therefore, given observed dispersal ability based on available data, we have determined as a general guideline that aquatic habitats associated with survey encounters (point estimates or the entirety of associated water bodies) and those within 3 km (1.9 mi) (approximating the upper bound of observed estimates of movement from all available data) along stream or meadow courses, and within 300 m (984 ft) overland (an intermediate value between the maximum observed distance traveled across dry land within a season) are included in the delineated habitat units, unless some other habitat parameter (as outlined in the PCEs, above) indicates low habitat utility or practical dispersal barriers such as high ridges or rough terrain. At a minimum, stream courses and the adjacent upland habitat up to a distance of 25 m (82 ft) are included (based on an estimate from empirical data in Wengert (2008, p. 13)). A maximum value was utilized here because habitat along stream courses must protect all frogs present and include key features of habitat quality (see PCEs, above).

(3) Habitat Unit Delineation

To identify specific areas containing the physical or biological features essential for mountain yellow-legged frogs that may require special management considerations or protection, we examined the current and historical locations of mountain yellow-legged frogs in relation to the State of California's CALWATER watershed classification system (version 2.2), using the smallest planning watersheds.

In order to circumscribe the boundaries of potential critical habitat, we adopted the CALWATER boundaries, where appropriate, and delineated boundaries based on currently occupied aquatic habitat, as well as historically occupied habitats within the current range of the species. Watershed boundaries or other topographic features were utilized as the boundary when they provided for the maintenance of the hydrology and water quality of the aquatic system. Additional areas were included in order to provide for the dispersal capacity of the frogs, as discussed above.

To further refine the boundaries, we obtained the MaxEnt 3.3.3e species distribution model covering both the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog (CDFG 2011, pp. A–1—A–5; Knapp, unpublished data). This model utilizes 10 environmental variables that were selected based on known physiological tolerances of the mountain yellow-legged frog and the Sierra Nevada yellow legged frog to temperature and water availability. The variables used as model inputs included elevation, maximum elevation of unit watershed, slope, average annual temperature, average temperature of coldest quarter of the year, average temperature of the warmest month of the year, annual precipitation, precipitation during the driest quarter of the year, distance to water, and lake density. The model additionally allows for interactions among these variables and can fit nonlinear relationships using a diversity of feature classes (CDFG 2011, pp. A–1—A–5).

The MaxEnt model renders a grid output with likelihood of frog occurrence, a practical index of historical habitat quality. This output was compared to 2,847 frog occurrence records to determine the fit of the model. The model derived by Dr. Knapp fit the data well. Area under the curve (AUC) values are a measure of model fit, where values of 0.5 are random and values approaching 1.0 are fully accounted for within the model. The model fit for the MaxEnt 3.3.3e species distribution model covering both the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged frog had AUC values of 0.916 (standard deviation (s.d.) = 0.002) and 0.964 (s.d. = 0.006), respectively.

Individual critical habitat units were constructed to reflect the balance of frog dispersal ability and habitat use (in other words, based on movement distances), along with projections of habitat quality as expressed by the probability models (MaxEnt grid outputs) and other habitat parameters consistent with the PCEs defined above.

Specifically, we considered areas to be actively utilized if extant occurrences existed within 300 m (984 ft) overland, or within 3 km (1.9 mi) if connected by high-quality dispersal habitat (stream or high lake density habitat). In general, areas up-gradient from occupied water bodies (within the catchment) were circumscribed at the watershed boundary. Aquatic habitat of high quality (defined by higher probability of frog presence) within 3 km (1.9 mi) from extant survey records was included, along with areas necessary to protect the relevant physical or biological features. We circumscribed all habitats with MaxEnt model output of 0.4 and greater within utilized watersheds, but also extended boundaries to include stream courses, ridges, or watershed boundaries where appropriate to protect the relevant physical or biological features. The threshold value of 0.4 was utilized as an index for establishing the historical range by Knapp, as it incorporated most historical and current frog locations (CDFG 2011, p. A–3). Using the available data (CDFW *et al.* unpub. data), this figure accounted for approximately 90 percent of extant population habitat association using our occurrence criteria (1,504 of 1,674 survey records). In the case of stream-based populations, we used a lower threshold for habitat suitability (0.2) to compensate for possible model bias and limited coverage in such habitats.

Where the MaxEnt 3.3.3e species distribution model indicated poor quality of intervening habitat in the mapped landscape within 3 km (1.9 mi) of survey records, we generally cropped these areas at dispersal barriers or watershed boundaries, but may have also followed streams or topographic features. To minimize human error from visual interpolation of habitat units, we aggregated the high-quality habitat grids from the model output in ArcGIS using a neighbor distance within 1,000 m (3,281 ft), and we used this boundary to circumscribe model outputs when selecting this boundary parameter. The 1,000-m (3,281-ft) aggregating criterion most closely agreed with manual visual interpolation methods that minimized land area included during unit delineation.

If areas were contiguous to designated areas within utilized watersheds, we include the higher quality habitat of the adjacent watersheds with model ranking 0.4 or greater. These areas are essential if they are of sufficiently high habitat quality to be important for future dispersal, translocation, and restoration consistent with recovery needs. In general, for these "neighboring" watersheds, circumscribed habitat boundaries followed either the 0.4+ MaxEnt aggregate polygon boundary, stream courses, or topographic features that otherwise constituted natural dispersal barriers. Further, subunit designation does not include catchment areas necessary to protect relevant physical or biological features if the mapped area was greater than 3 km (1.9 mi) from a survey location. This lower protective standard was appropriate because these areas were beyond the outside bound of extant survey records, and our confidence that these areas are, or will be, utilized is lower.

We also used historical records in some instances to include proximate watersheds that may or may not be currently utilized within subareas of high habitat quality as an index of the utility of habitat essential to the conservation of the frogs. This methodology was adopted to compensate for any uncertainties in our underlying scientific and site-specific knowledge of ecological features that indicate habitat quality. Unless significant changes have occurred on the landscape, an unutilized site confirmed by surveys to have historically supported frog populations likely contains more of the physical or biological features relative to one that has no historical records.

(4) Additional Criteria Applied to Critical Habitat for Sierra Nevada Yellow-Legged Frog

While the MaxEnt 3.3.3e model was an effective indicator of PCEs, and useful in defining suitable habitat based on the physical or biological features required by the Sierra Nevada yellow-legged frog, Dr. Knapp informed us in peer review that the model was based on physical and ecological parameters as a historical model that does not necessarily take into account current habitat conditions. Based on this feedback, and in light of many comments highlighting that such sites are degraded by water development and receive high public use (often being lower elevation reservoirs, which are less optimal than high-elevation, "back country" lakes and streams for frog restoration), we determined it was necessary to apply additional criteria to re-evaluate whether these very low restoration potential areas in fact should be included in the designation of critical habitat for the Sierra Nevada yellow-legged frog.

It was first necessary to find a method to objectively identify which areas have very low restoration potential. We used three factors to evaluate areas to determine which ones are characterized by: (1) High public use and disturbance, (2) water level fluctuations from reservoir management, and (3) a location where they are far removed from extant frog metapopulations. Based on these factors, we determined that such areas would be poor candidates for restoration actions when other, better, opportunities exist in geographic proximity.

We identified all reservoirs that were located close to paved roadways or populated areas and outside the expected, current, utilized range of extant Sierra Nevada yellow-legged frog populations. This included all reservoirs within 1 km (0.62 mi) of a paved roadway (TIGER/L shape files, U.S. Census 2014) or populated area (ESRI Streetmap Premium for ArcGIS 2013) that also have a dam (water control feature within 10 m (33 ft) (based on USGS National Hydrography Dams Dataset 2013)), and were greater than 3 km (1.8 mi) from an extant frog locality.

We also identified all lakes and streams slated for fish stocking by the CDFW (CDFW unpubl. data). We evaluated the list of areas proposed for the Statewide stocking program pending a final record of decision on the Hatchery Operations Environmental Impact Statement/Report (ICF Jones and Stokes, 2010). We looked at all those areas and further screened them to identify only those outside and intersecting a 3-km (1.9-mi) buffer to extant frog localities.

We then identified all areas that were brought up during the public comment periods (including agency comments) because they are subject to high levels of public consumptive uses (such as cabins, resorts, angling, and other recreational activities) or other significant habitat alteration. These are areas where, during our public comment periods, the commenter(s) identified, by name, locations that currently experience recreational use (including angling), have low habitat-restoration value, lack extant frogs, or are distanced from extant frogs.

There were many areas common to each of the three evaluation groups above. We aggregated all sites identified using the process above, and we eliminated the duplicates. We evaluated each area on a case-by-case basis to determine whether it met the criteria for final designation. We analyzed the overall impact that the absence of a specific location would have on the conservation value of the of critical habitat subunit in which it was located. The analysis used the same ecological qualifications, based on the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frogs and the amount and spatial arrangement of features needed in each subunit to meet the definition of critical habitat.

If a site was intersecting, or within, a 3-km (1.9-mi) buffer denoting proximity to extant frog metapopulations, we applied additional weighting within our analysis using parameters such as: Distance by land to the extant locality, distance by stream to the extant locality, overall habitat quantity and habitat quality (by MaxEnt 3.3.3e model) within that same subunit and in immediate proximity to the site under consideration for reevaluation, and number and spatial arrangement (density and overall dispersion) of other extant frog localities within that same subunit. We also factored in the relative status of the particular genetic clade to which that subunit is associated. Sites that are within 500 m (1,640 ft) overland, or 1 km (0.62 mi) via stream from an extant frog locality remain in this final critical habitat designation. These figures are conservative estimates for single season movement (from empirical data, USFWS unpubl. data), which may be used to approximate functional home range; are consistent with the 1.0-km distance used during the California State Department of Fish and Wildlife status evaluation (CDFW 2011) to define metapopulation connectivity; and are currently the standard being implemented within ongoing consultations (USFWS 2014).

This analysis was conducted in the context of the spatial and ecological features of each critical habitat subunit and the conservation needs of the species. Although these areas do have the PCEs reflecting the physical or biological features comprising critical habitat, they are not being included in this final critical habitat designation because current habitat conditions were not reflected in our original habitat model. These areas were ultimately eliminated based on the criteria we used for determining the boundaries of critical habitat. As a result of comments received during the public comment period and peer review, we are now considering current habitat conditions and the restoration potential of these degraded habitats in light of the recovery needs for Sierra Nevada yellow-legged frog.

A full list of sites we no longer include in this critical habitat designation appears in Table 2, below. The areal extent of each site on the list is based on the high-water line for solely the aquatic portion of the lake, reservoir, or stream stretch. Additionally, unless explicitly indicated (by name) in Table 2, the surrounding lands, waterways, or tributaries of each site on the list remain in the final designation. Areas that are not explicitly indicated by name in Table 2 remain part of the final critical habitat designation. Interested parties with questions as to whether a particular project lies within designated critical habitat for Sierra Nevada yellow-legged frog within the immediate proximity to one of the areas listed in Table 2 should contact the local jurisdictional field office of the Service to resolve uncertainty.

Yosemite Toad

(1) Data Sources

We obtained observational data from the following sources to include in our GIS database for the Yosemite toad: (a) Surveys of the National Parks within the range of the Yosemite toad, including information collected by R. Knapp's Sierra Lakes Inventory Project and G. Fellers; (b) survey data from each of the

National Forests within the range of the species; (c) CDFW High Mountain Lakes Project survey data; and (d) SNAMPH survey data from USFS. We cross-checked the data received from each of these sources with information contained in the CNDDB. Given that the data sources (a) through (d) are the result of systematic surveys, provide better survey coverage of the range of the Yosemite toad, and are based on observation data of personnel able to accurately identify the species, we opted to utilize the above sources in lieu of the CNDDB data.

(2) Occurrence Criteria

We considered extant all localities where Yosemite toad has been detected since 2000. The 2000 date was used for several reasons: (1) Comprehensive surveys for Yosemite toad throughout its range were not conducted prior to 2000, so data prior to 2000 are limited; and (2) given the longevity of the species, toad locations identified since 2000 are likely to contain extant populations.

We considered the occupied geographic range of the species to include all suitable habitats within dispersal distance and geographically contiguous to extant Yosemite toad populations. To maintain genetic integrity and provide for sufficient range and distribution of the species, we identified areas with dense concentrations of Yosemite toad populations interconnected or interspersed among suitable breeding habitats and vegetation types, as well as populations on the edge of the range of the species. We also delineated specific areas to include dispersal and upland migration corridors.

Two movement studies using radiotelemetry have been completed for the Yosemite toad from which migration distances may be derived. One study took place in the Highland Lakes on the Stanislaus National Forest (Martin 2008, pp. 98–113), and the other took place in the Bull Creek watershed on the Sierra National Forest (Liang 2010, p. 96). The maximum observed seasonal movement distances from breeding pools within the Highland Lakes area was 657 m (2,157 ft) (Martin 2008, p. 144), while the maximum at the Bull Creek watershed was 1,261 m (4,137 ft). Additionally, Liang *et al.* (2010, p. 6) utilized all available empirical data to derive a maximum movement distance estimate from breeding locations to be 1,500 m (4,920 ft), which they utilized in their modeling efforts. Despite these reported dispersal distances, the results may not necessarily apply across the range of the species. It is likely that movement is largely a function of the habitat types particular to each location.

We used the mean plus 1.96 times the standard error as an expression of the 95 percent confidence interval (Streiner 1996, pp. 498–502; Curran-Everett 2008, pp. 203–208) to estimate species-level movement behavior from such studies. Using this measure, we derived a confidence-bounded estimate for average distance moved in a single season based on the Liang study (2010, pp. 107–109) of 1,015 m (3,330 ft). We focused on the Liang study because it had a much larger sample size and likely captured greater variability within a population. However, given that Liang *et al.* (2010, p. 6) estimated and applied a maximum movement distance of 1,500 m (4,920 ft), we opted to choose the approximate midpoint of these two methods, rounded to the nearest 0.25 km (0.16 mi) and determined 1,250 m (4,101 ft) to be an appropriate estimated dispersal distance from breeding locations. As was the case with the estimate chosen for the mountain yellow-legged frog complex, this distance does not represent the maximum possible dispersal distance, but represents a distance that will reflect the movement of a large majority of Yosemite toads.

Therefore, our criteria for identifying the boundaries of critical habitat units take into account dispersal behavior and distances, but also consider the underlying habitat quality and types, specifically the physical or biological features (and site-specific knowledge, where available), in defining boundaries for essential habitat.

(3) Habitat Unit Delineation

To identify areas containing the physical or biological features essential for the Yosemite toad that may require special management considerations or protection, we examined the current and historical locations of Yosemite toads in relation to the State of California vegetation layer, USFS meadow information dataset, the State of California's CALWATER watershed classification system (version 2.2) using the smallest planning watersheds, and appropriate topographic maps.

In order to circumscribe the boundaries of potential critical habitat, we expanded the bounds of known breeding locations for the Yosemite toad by the 1,250-m (4,101-ft) dispersal distance and delineated boundaries also taking into account vegetation types, meadow complexes, and dispersal barriers. Where appropriate, we utilized the CALWATER boundaries to reflect potential barriers to dispersal (high, steep ridges), and delineated boundaries based on our best estimate of what constitutes currently utilized habitat. Watershed boundaries or other topographic features were marked as the unit boundary when that boundary provided for the maintenance of the hydrology and water quality of the aquatic system.

In some instances (such as no obvious dispersal barrier or uncertainty regarding the suitability of habitat within dispersal distance of a known toad location), to further refine the boundaries, we obtained the MaxEnt 3.3.3e species habitat suitability/distribution model developed and utilized by Liang *et al.* (2010) and Liang and Stohlgren (2011), which covered the range of the Yosemite toad. This model utilized nine environmental and three anthropogenic data layers to provide a predictor of Yosemite toad locations that serves as a partial surrogate for habitat quality and therefore underlying physical or biological features or PCEs. The variables used as model inputs included slope, aspect, vegetation, bioclimate variables (including annual mean temperature, mean diurnal range, temperature seasonality, annual precipitation, precipitation of wettest month, and precipitation seasonality), distance to agriculture, distance to fire perimeter, and distance to timber activity.

As the model incorporated factors that did not directly correlate to the physical or biological features or PCEs (for example, distance to agriculture, distance to fire perimeter, and distance to timber activity) (Liang and Stohlgren 2011, p. 22)), further analysis was required. In areas that were either occupied by the Yosemite toad or within dispersal distance of the toad (but the model indicated a low probability of occurrence), we assessed the utility of the model by further estimating potential sources of model derivation (such as fire or anthropogenic factors). If habitat quality indicated by the MaxEnt model was biased based on factors other than those linked to physical or biological features or PCEs, we discounted the MaxEnt output in those areas and based our designation on the PCEs. In these cases, areas are included in our critical habitat designation that ranked low in the MaxEnt output.

Individual critical habitat units are constructed to reflect toad dispersal ability and habitat use, along with projections of habitat quality, as expressed by the probability models (MaxEnt grid outputs) and other habitat parameters consistent with the PCEs defined above.

We also used historical records as an index of the utility of habitat essential to the conservation of the Yosemite toad to help compensate for any uncertainties in our underlying scientific and site-specific knowledge of ecological features that indicate habitat quality, as we did for the frogs.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad (*i.e.,* areas with none of the PCEs extant). The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site *http://www.fws.gov/sacramento,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Units are designated based on sufficient elements of physical or biological features being present to support the life processes of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad. Some units contain all of the identified elements of physical or biological features and support multiple life processes, while some segments contain only some elements of the physical or biological features necessary to support the species' particular use of that habitat. It is important to understand that not all PCEs are required to provide functional habitat. When trying to determine if any specific areas or infrastructure are excluded by narrative, it is best to discuss your particular project with the Fish and Wildlife Office of jurisdiction.

Final Critical Habitat Designation

Based on the above described criteria, we are designating 437,929 ha (1,082,147 ac) as critical habitat for the Sierra Nevada yellow-legged frog (Table 1). This area represents approximately 18 percent of the historical range of the species as estimated by Knapp (unpublished data). All subunits designated as critical habitat are considered occupied (at the subunit level) and include lands within Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG

Subunit No.	Subunit name	Hectares (ha)	Acres (ac)
1A	Morris Lake	1,079	2,665
1B	Bean Creek	13,523	33,417
1C	Deanes Valley	2,020	4,990
1D	Slate Creek	2,688	6,641
2A	Boulder/Lone Rock Creeks	4,500	11,119
2B	Gold Lake	6,189	15,294
2C	Black Buttes	55,057	136,049
2D	Five Lakes	3,758	9,286
2E	Crystal Range	33,406	82,548
2F	East Amador	43,414	107,278
2G	North Stanislaus	10,462	25,851
2H	Wells Peak	11,711	28,939
2I	Emigrant Yosemite	86,161	212,908
2J	Spiller Lake	1,094	2,704
2K	Virginia Canyon	891	2,203
2L	Register Creek	838	2,070
2M	White Mountain	8,416	20,796
2N	Unicorn Peak	2,088	5,160
3A	Yosemite Central	1,408	3,480
3B	Cathedral	38,784	95,837
3C	Minarets	3,090	7,636
3D	Mono Creek	18,481	45,666
3E	Evolution/Le Conte	87,136	215,318
3F	Pothole Lakes	1,736	4,289
Total		437,929	1,082,147

Following further evaluation (see *Criteria Used To Identify Critical Habitat* above), response to comments, and peer review, we are removing certain areas formerly included within the proposed critical habitat designation (these removal areas are already subtracted from the totals listed in Table 1). These areas are listed below.

TABLE 2—AREAS ELIMINATED FROM FINAL CRITICAL HABITAT DESIGNATION FOR THE SIERRA NEVADA YELLOW-LEGGED FROG BY CRITICAL HABITAT SUBUNIT [1]

Subunit	Specific	Areas meeting the definition of critical habitat, in hectares (acres)	Areas removed from critical habitat, in hectares (acres)
1A. Morris Lake	Unoccupied Watershed	7,154 (17,677)	6,076 (15,012)
1B. Bean Creek	Bucks Lake	14,224 (35,148)	700 (1,731)
2B. Gold Lake	Big Deer Lake, Long Lake, Packer Lake, Salmon Lakes (Upper and Lower), Sardine Lakes (Upper and Lower), Saxonia Lake, Smith Lake, Volcano Lake, Young America Lake.	6,354 (15,702)	165 (408)
2C. Black Buttes	Bowman Reservoir, Cascade Lakes, Donner Euer Valley, Faucherie Lake, Ice Lakes, Independence Lake, Jackson Lake, Kidd Lake, Lake Angela, Lake Mary, Lake Van Norden, Lower Lola Montez Lake; Rock Lakes (Upper and Lower), Sawmill Lake, Spaulding Reservoir.	55,961 (138,283)	904 (2,234)
2E. Crystal Range	South Fork American River at Camp Sacramento, Buck Island Lake, Dark Lake, Echo Lakes (Upper and Lower), Rockbound Lake, Rubicon Reservoir, Wrights Lake.	33,666 (83,191)	260 (643)
2F. East Amador	Bear River Reservoirs (Upper and Lower), Caples Lake, Frog Lake, Kinney Reservoir, Kirkwood Lake, Woods Lake.	44,047 (108,842)	633 (1,564)
2G. North Stanislaus	Alpine Lake, Duck Creek North Fork Diversion Reservoir, Union Reservoir, Utica Reservoir.	10,701 (26,444)	240 (593)
2I. Emigrant Yosemite	Camp Lake, Hyatt Lake	86,181 (212,958)	20 (50)
2M. White Mountain	Ellery Lake, South Fork Lee Vining Creek, Lee Vining Creek (Saddlebag Creek), Odell Lake, Saddlebag Lake, Steelhead Lake, Tioga Lake, Towser Lake.	8,596 (21,242)	180 (446)
3B. Cathedral	Gem Lake	38,892 (96,104)	108 (267)
3D. Mono Creek	Rock Creek, Rock Creek Lake	18,504 (45,723)	23 (57)
3E. Evolution/Leconte	Apollo Lake, Grass Lake, Lamarck Lakes (Upper and Lower), Lamarck Creek, South Lake.	87,239 (215,572)	103 (253)

[1] These areas were eliminated either because of erroneous occupancy records (subunit 1A) (no lake was removed) or because of very low recovery potential due to highly fluctuating water levels, heavy recreational use, and distance from extant frogs (all other subunits).

We are designating 89,637 ha (221,498 ac) as critical habitat for the northern DPS of the mountain yellow-legged frog (Table 3). This area represents approximately 19 percent of the historical range of the northern DPS of the mountain yellow-legged frog in the Sierra Nevada. All subunits designated as critical habitat are considered occupied (at the subunit level) and include lands within Fresno, Inyoand Tulare Counties, California.

TABLE 3—DESIGNATED CRITICAL HABITAT UNITS FOR THE NORTHERN DPS OF THE MOUNTAIN YELLOW-LEGGED FROG

Subunit No. [1]	Subunit name	Hectares (ha)	Acres (ac)
4A	Frypan Meadows	1,585	3,917
4B	Granite Basin	1,777	4,391
4C	Sequoia Kings	67,566	166,958
4D	Kaweah River	3,663	9,052
5A	Blossom Lakes	2,069	5,113
5B	Coyote Creek	9,802	24,222
5C	Mulkey Meadows	3,175	7,846
Total		89,637	221,498

[1] Subunit numbering begins at 4, following designation of southern DPS of the mountain yellow-legged frog (3 units).

We are designating 303,889 ha (750,926 ac) as critical habitat for the Yosemite toad (Table 4). This area represents approximately 28 percent of the historical range of the Yosemite toad in the Sierra Nevada. All units designated as critical habitat are considered occupied (at the unit level) and include lands within Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California.

TABLE 4—DESIGNATED CRITICAL HABITAT UNITS FOR THE YOSEMITE TOAD

Unit No.	Unit name	Hectares (ha)	Acres (ac)
1	Blue Lakes/Mokelumne	14,884	36,778
2	Leavitt Lake/Emigrant	30,803	76,115
3	Rogers Meadow	11,797	29,150
4	Hoover Lakes	2,303	5,690

TABLE 4—DESIGNATED CRITICAL HABITAT UNITS FOR THE YOSEMITE TOAD—Continued

Unit No.	Unit name	Hectares (ha)	Acres (ac)
5	Tuolumne Meadows/Cathedral	56,530	139,688
6	McSwain Meadows	6,472	15,992
7	Porcupine Flat	1,701	4,204
8	Westfall Meadows	1,859	4,594
9	Triple Peak	4,377	10,816
10	Chilnualna	6,212	15,351
11	Iron Mountain	7,706	19,043
12	Silver Divide	39,987	98,809
13	Humphrys Basin/Seven Gables	20,666	51,067
14	Kaiser/Dusy	70,978	175,390
15	Upper Goddard Canyon	14,905	36,830
16	Round Corral Meadow	12,711	31,409
Total		303,889	750,926

Sierra Nevada Yellow-Legged Frog

We are designating three units encompassing 24 subunits as critical habitat for the Sierra Nevada yellow-legged frog. The critical habitat units and subunits that we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Sierra Nevada yellow-legged frog. Units are numbered for the three major genetic clades (Vredenburg *et al.* 2007, p. 361) that have been identified rangewide for the Sierra Nevada yellow-legged frog. Distinct portions within each clade are designated as subunits. The 24 subunits we designate as critical habitat are listed in Table 5, and all subunits are known to be currently occupied based on the best available scientific and commercial information.

TABLE 5—CRITICAL HABITAT SUBUNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat subunit	Federal ha (ac)	State/local[3] ha (ac)	Private ha (ac)	Total[1] ha (ac)	Known manageable threats[2]
1A. Morris Lake	1,079 (2,665)	0 (0)	0 (0)	1,079 (2,665)	1, 2, 3, 4, 5
1B. Bean Creek	12,464 (30,798)	0 (0)	1,060 (2,619)	13,523 (33,417)	1, 3, 4, 5
1C. Deanes Valley	1,962 (4,847)	0 (0)	58 (143)	2,020 (4,990)	3, 4, 5
1D. Slate Creek	2,259 (5,581)	0 (0)	429 (1,060)	2,688 (6,641)	3, 4, 5
2A. Boulder/Lone Rock Creeks	3,953 (9,767)	0 (0)	547 (1,352)	4,500 (11,119)	1, 2, 3, 4, 5
2B. Gold Lake	5,488 (13,561)	0 (0)	702 (1,734)	6,189 (15,294)	1, 3, 4, 5
2C. Black Buttes	32,649 (80,678)	0 (0)	22,408 (55,371)	55,057 (136,049)	1, 2, 3, 4, 5
2D. Five Lakes	2,396 (5,921)	0 (0)	1,362 (3,365)	3,758 (9,286)	1, 4, 5
2E. Crystal Range	31,261 (77,249)	0 (0)	2,145 (5,299)	33,406 (82,548)	1, 2, 3, 5
2F. East Amador	40,140 (99,188)	56 (138)	3,218 (7,952)	43,414 (107,278)	1, 2, 3, 4, 5
2G. North Stanislaus	10,445 (25,811)	0 (0)	16 (41)	10,462 (25,851)	1, 2, 3, 4, 5
2H. Wells Peak	11,650 (28,788)	0 (0)	61 (150)	11,711 (28,939)	1, 3, 4, 5
2I. Emigrant Yosemite	86,089 (212,730)	*50 (*124)	22 (54)	86,161 (212,908)	1, 3
2J. Spiller Lake	1,094 (2,704)	0 (0)	0 (0)	1,094 (2,704)	1
2K. Virginia Canyon	891 (2,203)	0 (0)	0 (0)	891 (2,203)	1
2L. Register Creek	838 (2,070)	0 (0)	0 (0)	838 (2,070)	1
2M. White Mountain	8,366 (20,674)	0 (0)	49 (122)	8,416 (20,796)	1
2N. Unicorn Peak	2,088 (5,160)	0 (0)	0 (0)	2,088 (5,160)	1

TABLE 5—CRITICAL HABITAT SUBUNITS FOR THE SIERRA NEVADA YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING—Continued

Critical habitat subunit	Federal ha (ac)	State/local[3] ha (ac)	Private ha (ac)	Total[1] ha (ac)	Known manageable threats[2]
3A. Yosemite Central	1,408 (3,480)	0 (0)	0 (0)	1,408 (3,480)	1
3B. Cathedral	38,784 (95,837)	0 (0)	0 (0)	38,784 (95,837)	1, 3
3C. Minarets	3,090 (7,636)	0 (0)	0 (0)	3,090 (7,636)	1, 5
3D. Mono Creek	18,481 (45,666)	0 (0)	0 (0)	18,481 (45,666)	1, 3, 5
3E. Evolution/Leconte	86,968 (214,903)	*81 (*200)	87 (215)	87,136 (215,318)	1, 3
3F. Pothole Lakes	1,735 (4,286)	0 (0)	1 (2)	1,736 (4,289)	1, 5
Total	405,578 (1,002,204)	56 (138) *131 (*324)	32,165 (79,481)	437,929 (1,082,146)	

Note: Area sizes may not sum due to rounding.

[1] Area estimates in ha (ac) reflect the entire area within the designated critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2] Codes of known threats that may require special management considerations or protection of the essential physical or biological features:

1. Fish Persistence and Stocking
2. Water Diversions/Development
3. Inappropriate Grazing
4. Timber Harvest/Fuels Reduction
5. Recreation

[3] Asterisks * signify local jurisdictional (County) lands and are presented for brevity in the same column with State jurisdiction lands.

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Sierra Nevada yellow-legged frog below. Each unit and subunit contains the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog, which may require special management considerations or protection (see *Special Management Considerations or Protection,* above).

Unit 1: Sierra Nevada Yellow-Legged Frog Clade 1

Unit 1 represents the northernmost portion of the species' range. It reflects unique ecological features within the range of the species, comprising populations that are stream-based. Unit 1, including all subunits, is an essential component of the entirety of this critical habitat designation due to the unique genetic and geographic distribution this unit encompasses. The frog populations within Clade 1 of the Sierra Nevada yellow-legged frog are at very low numbers and face significant threats from habitat fragmentation. The critical habitat within the unit is necessary to sustain viable populations within Clade 1 of the Sierra Nevada yellow-legged frog, which are at very low abundances. Unit 1 is crucial to the species for range expansion and recovery.

Subunit 1A: Morris Lake

The Morris Lake subunit consists of approximately 1,079 ha (2,665 ac), and is located in Plumas County, California, approximately 4 km (2.5 mi) northwest of Highway 70. Land ownership within this subunit consists entirely of Federal land within the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Morris Lake subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 1B: Bean Creek

The Bean Creek subunit consists of approximately 13,523 ha (33,417 ac). It is located in Plumas County, California, approximately 3 km (1.9 mi) south of Highway 70 near the intersection with Caribou Road, and it is bisected on the south end by the Oroville Highway. Land ownership within this subunit consists of approximately 12,464 ha (30,798 ac) of Federal land and 1,060 ha (2,619 ac) of private land. The Bean Creek subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Bean Creek subunit may require special management considerations or protection due to the presence of introduced fishes, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 1C: Deanes Valley

The Deanes Valley subunit consists of approximately 2,020 ha (4,990 ac) and is located in Plumas County, California, approximately 5.7 km (3.6 mi) south of Buck's Lake Road, 6.4 km (4 mi) east of Big Creek Road, 7.5 km (4.7 mi) west of Quincy-LaPorte Road, and 3.5 km (2.2 mi) north of the Middle Fork Feather

River. Land ownership within this subunit consists of approximately 1,962 ha (4,847 ac) of Federal land and 58 ha (143 ac) of private land. The Deanes Valley subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Deanes Valley subunit may require special management considerations or protection due to inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 1D: Slate Creek

The Slate Creek subunit consists of approximately 2,688 ha (6,641 ac), and is located in Plumas and Sierra Counties, California, approximately 0.7 km (0.4 mi) east of the town of LaPorte, and 2.5 km (1.6 mi) southwest of the west branch of Canyon Creek. Land ownership within this subunit consists of approximately 2,259 ha (5,581 ac) of Federal land and 429 ha (1,060 ac) of private land. The Slate Creek subunit is located entirely within the boundaries of the Plumas National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Slate Creek subunit may require special management considerations or protection due to inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Unit 2: Sierra Nevada Yellow-Legged Frog Clade 2

This unit represents a significant fraction of the Sierra Nevada yellow-legged frog's range, and it reflects unique ecological features within the range by comprising populations that are both stream- and lake-based. Unit 2, including all subunits, is an essential component of the entirety of this critical habitat designation due to the unique genetic and geographic distribution this unit encompasses. The frog populations within Clade 2 of the Sierra Nevada yellow-legged frog distribution are at very low to intermediate abundance and face significant threats from habitat fragmentation resulting from the introduction of fish. The critical habitat within the unit is necessary to sustain viable populations within Clade 2 of the Sierra Nevada yellow-legged frog, which are at very low to intermediate abundances. Unit 2 is crucial to the species for range expansion and recovery.

Subunit 2A: Boulder/Lone Rock Creeks

The Boulder/Lone Rock Creeks subunit consists of approximately 4,500 ha (11,119 ac), and is located in Plumas and Lassen Counties, California, between 8 km (5 mi) and 18 km (11.3 mi) west of Highway 395 near the county line along Wingfield Road. Land ownership within this subunit consists of approximately 3,953 ha (9,767 ac) of Federal land and 547 ha (1,352 ac) of private land. Subunit 2A includes Antelope Lake (which receives two creeks as its northwestern headwaters), and these water bodies provide connectivity for both main areas within the subunit. The Boulder/Lone Rock Creeks subunit is located predominantly within the boundaries of the Plumas National Forest, with some area lying within the Lassen National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Boulder/Lone Rock Creeks subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2B: Gold Lake

The Gold Lake subunit consists of approximately 6,189 ha (15,294 ac), and is located in Plumas and Sierra Counties, California, approximately 8.7 km (5.4 mi) south of Highway 70, and 4.4 km (2.75 mi) north of Highway 49, along Gold Lake Highway to the east. Land ownership within this subunit consists of approximately 5,488 ha (13,561 ac) of Federal land and 702 ha (1,734 ac) of private land. The Gold Lake subunit is located within the Plumas and Tahoe National Forests. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Gold Lake subunit may require special management considerations or protection due to introduced fishes, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2C: Black Buttes

The Black Buttes subunit consists of approximately 55,057 ha (136,049 ac), and spans from Sierra County through Nevada County into Placer County, California. It is 8.5 km (5.3 mi) west of Highway 89, and 3.7 km (2.3 mi) north of the North Fork American River, and is bisected on the south by Highway 80. Land ownership within this subunit consists of approximately 32,649 ha (80,678 ac) of Federal land and 22,408 ha (55,371 ac) of private land. The Black Buttes subunit is located entirely within the boundaries of the Tahoe National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Black Buttes subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2D: Five Lakes

The Five Lakes subunit consists of approximately 3,758 ha (9,286 ac), and is located in the eastern portion of Placer County, California, approximately 2 km (1.25 mi) west of Highway 89 and 12.3 km (7.7 mi) east of Foresthill Road. Land ownership within this subunit consists of approximately 2,396 ha (5,921 ac) of Federal land and 1,362 ha (3,365 ac) of private land. The Five Lakes subunit is located entirely within the boundaries of the Tahoe National Forest, including area within the Granite Chief Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Five Lakes subunit may require special management considerations or protection due to the presence of introduced fishes, timber management and fuels reduction, and recreational activities.

Subunit 2E: Crystal Range

The Crystal Range subunit consists of approximately 33,406 ha (82,548 ac), and is located primarily in El Dorado and Placer Counties, California, approximately 3.8 km (2.4 mi) west of Highway 89, bounded on the south by Highway 50, and 7 km (4.4 mi) east of Ice House Road. The Crystal Range subunit includes portions of the Desolation Wilderness. Land ownership within this subunit consists of approximately 31,261 ha (77,249 ac) of Federal land and 2,145 ha (5,299 ac) of private land. The Crystal Range subunit includes areas within the Eldorado and Tahoe National Forests and also the Lake Tahoe Basin Management Unit. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Crystal Range subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, and recreational activities.

Subunit 2F: East Amador

The East Amador subunit consists of approximately 43,414 ha (107,278 ac), and is located in Amador, Alpine, and El Dorado Counties, California. The East Amador subunit is roughly bounded on the northwest by Highway 88, and on the southeast by Highway 4. Land ownership within this subunit consists of approximately 40,140 ha (99,188 ac) of Federal land, 56 ha (138 ac) of State land, and 3,218 ha (7,952 ac) of private land. The East Amador subunit includes areas within the Eldorado, Stanislaus, and Humboldt-Toiyabe National Forests, and areas within the Emigrant Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the East Amador subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2G: North Stanislaus

The North Stanislaus subunit consists of approximately 10,462 ha (25,851 ac), and is located in Alpine, Tuolumne, and Calaveras Counties, California. It is south of the North Fork Mokelumne River, and is bisected by Highway 4, which traverses the unit from southwest to northeast. Land ownership within this subunit consists of approximately 10,445 ha (25,811 ac) of Federal land and 16 ha (41 ac) of private land. The North Stanislaus subunit is located entirely within the boundaries of the Stanislaus National Forest, the Mokelumne Wilderness and Carson-Iceberg Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the North Stanislaus subunit may require special management considerations or protection due to the presence of introduced fishes, water diversions and operations, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2H: Wells Peak

The Wells Peak subunit consists of approximately 11,711 ha (28,939 ac), and is located in Alpine, Mono, and Tuolumne Counties, California, approximately 6.4 km (4 mi) west of Highway 395, and bounded by Highway 108 on the south. Land ownership within this subunit consists of approximately 11,650 ha (28,788 ac) of Federal land and 61 ha (150 ac) of private land. Federal holdings within the Wells Peak subunit are within the Humboldt-Toiyabe and Stanislaus National Forests, and the Carson-Iceberg and Emigrant Wilderness Areas. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Wells Peak subunit may require special management considerations or protection due to introduced fishes, inappropriate grazing activity, timber management and fuels reduction, and recreational activities.

Subunit 2I: Emigrant Yosemite

The Emigrant Yosemite subunit consists of approximately 86,161 ha (212,908 ac), and is located in Tuolumne and Mono Counties, California, approximately 11 km (6.9 mi) south of Highway 108 and 7.4 km (4.6 mi) north of Hetch Hetchy Reservoir. Land ownership within this subunit consists of approximately 86,089 ha (212,730 ac) of Federal land, 50 ha (124 ac) of local jurisdiction lands, and 22 ha (54 ac) of private land. The Emigrant Yosemite subunit is predominantly in Yosemite National Park and the Stanislaus and Humboldt-Toiyabe National Forests, including lands within the Emigrant and Hoover Wilderness Areas. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the

Emigrant Yosemite subunit may require special management considerations or protection due to the presence of introduced fishes and inappropriate grazing activity.

Subunit 2J: Spiller Lake

The Spiller Lake subunit consists of approximately 1,094 ha (2,704 ac), and is located in Tuolumne County, California, approximately 1.2 km (0.75 mi) west of Summit Lake. The Spiller Lake subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Spiller Lake subunit may require special management considerations or protection due to fish persistence.

Subunit 2K: Virginia Canyon

The Virginia Canyon subunit consists of approximately 891 ha (2,203 ac), and is located in Tuolumne County, California, approximately 4.3 km (2.7 mi) southwest of Spiller Lake, and roughly bounded on the east by Return Creek. The Virginia Canyon subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Virginia Canyon subunit may require special management considerations or protection due to fish persistence.

Subunit 2L: Register Creek

The Register Creek subunit consists of approximately 838 ha (2,070 ac), and is located in Tuolumne County, California, approximately 1.2 km (0.75 mi) west of Regulation Creek, with Register Creek intersecting the subunit on the southwest end and running along the eastern portion to the north. The Register Creek subunit consists entirely of Federal land, all located within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Register Creek subunit may require special management considerations or protection due to fish persistence.

Subunit 2M: White Mountain

The White Mountain subunit consists of approximately 8,416 ha (20,796 ac), and is located in Tuolumne and Mono Counties, California, approximately 12.4 km (7.75 mi) west of Highway 395, and is intersected on the southeast boundary by Tioga Pass Road (Highway 120). Land ownership within this subunit consists of approximately 8,366 ha (20,674 ac) of Federal land and 49 ha (122 ac) of private land. The White Mountain subunit is predominantly located within Yosemite National Park and Inyo National Forest, with area located within the Hoover Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the White Mountain subunit may require special management considerations or protection due to fish persistence.

Subunit 2N: Unicorn Peak

The Unicorn Peak subunit consists of approximately 2,088 ha (5,160 ac), and is located in Tuolumne County, California, and is intersected from east to west on its northern boundary by Tioga Pass Road (Highway 120). The Unicorn Peak subunit consists entirely of Federal land, all within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Unicorn Peak subunit may require special management considerations or protection due to fish persistence.

Unit 3: Sierra Nevada Yellow-Legged Frog Clade 3

This unit represents a significant portion of the species' range, and it reflects a core conservation area comprising the most robust remaining populations at higher densities (closer proximity) across the species' range. Unit 3, including all subunits, is an essential component of the entirety of this critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 3 of the Sierra Nevada yellow-legged frog distribution face significant threats from habitat fragmentation. The critical habitat within the Unit is necessary to sustain viable populations within Clade 3 of the Sierra Nevada yellow-legged frog, which are at very low abundances. Unit 3 is crucial to the species for range expansion and recovery.

Subunit 3A: Yosemite Central

The Yosemite Central subunit consists of approximately 1,408 ha (3,480 ac), and is located in Mariposa County, California, approximately 4 km (2.5 mi) northwest of Tioga Pass Road (Highway 120) in the heart of Yosemite National Park. The Yosemite Central subunit consists entirely of Federal lands within Yosemite National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Yosemite Central subunit may require special management considerations or protection due to fish persistence.

Subunit 3B: Cathedral

The Cathedral subunit consists of approximately 38,784 ha (95,837 ac), and is located in Mariposa, Madera, Mono, and Tuolumne Counties, California, approximately 15.6 km (9.75 mi) west of Highway 395 and 9.4 km (5.9 mi) south of Highway 120. The

Cathedral subunit consists entirely of Federal land, including lands in Yosemite National Park, the Inyo National Forest, and an area within the Ansel Adams Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Cathedral subunit may require special management considerations or protection due to the presence of introduced fishes and inappropriate grazing activity.

Subunit 3C: Minarets

The Minarets subunit consists of approximately 3,090 ha (7,636 ac), and is located in Madera County, California, approximately 5.4 km (3.4 mi) southwest of Highway 203. The Minarets subunit consists entirely of Federal land located within the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Minarets subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 3D: Mono Creek

The Mono Creek subunit consists of approximately 18,481 ha (45,666 ac), and is located in Fresno and Inyo Counties, California, approximately 16 km (10 mi) southwest of Highway 395. The Mono Creek subunit consists entirely of Federal land located within the Sierra and Inyo National Forests, including area within the John Muir Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Mono Creek subunit may require special management considerations or protection due to the presence of introduced fishes, inappropriate grazing activity, and recreational activities.

Subunit 3E: Evolution/Leconte

The Evolution/Leconte subunit consists of approximately 87,136 ha (215,318 ac), and is located in Fresno and Inyo Counties, California, approximately 12.5 km (7.8 mi) southwest of Highway 395. Land ownership within this subunit consists of approximately 86,968 ha (214,903 ac) of Federal land, 81 ha (200 ac) of local jurisdictional lands, and 87 ha (215 ac) of private land. The Evolution/Leconte subunit is predominantly within the Sierra and Inyo National Forests, including area within the John Muir Wilderness, and Kings Canyon National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Evolution/Leconte subunit may require special management considerations or protection due to the presence of introduced fishes and inappropriate grazing activity.

Subunit 3F: Pothole Lakes

The Pothole Lakes subunit consists of approximately 1,736 ha (4,289 ac), and is located in Inyo County, California, approximately 13.1 km (8.2 mi) west of Highway 395. Land ownership within this subunit consists of approximately 1,735 ha (4,286 ac) of Federal land and 1 ha (2 ac) of private land. The Pothole Lakes subunit is almost entirely located within the Inyo National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog in the Pothole Lakes subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Northern DPS of the Mountain Yellow-Legged Frog

We are designating two units and seven subunits as critical habitat for the northern DPS of the mountain yellow-legged frog. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the northern DPS of the mountain yellow-legged frog. Units are named after the major genetic clades (Vredenburg *et al.* 2007, p. 361), of which three exist rangewide for the mountain yellow-legged frog, and two are within the northern DPS of the mountain yellow-legged frog in the Sierra Nevada. Distinct units within each clade are designated as subunits. Unit designations begin numbering sequentially, following the three units already designated on September 14, 2006, for the southern DPS of the mountain yellow-legged frog (71 FR 54344). The seven subunits we designate as critical habitat are listed in Table 6 and are, based on the best available scientific and commercial information, currently occupied.

TABLE 6—CRITICAL HABITAT UNITS FOR THE NORTHERN DPS OF THE MOUNTAIN YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat unit	Federal Ha (Ac)	Private Ha (Ac)	Total[1] Ha (Ac)	Known manageable threats[2]
4A. Frypan Meadows	1,585 (3,917)	0 (0)	1,585 (3,917)	1

TABLE 6—CRITICAL HABITAT UNITS FOR THE NORTHERN DPS OF THE MOUNTAIN YELLOW-LEGGED FROG (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING—Continued

Critical habitat unit	Federal Ha (Ac)	Private Ha (Ac)	Total[1] Ha (Ac)	Known manageable threats[2]
4B. Granite Basin	1,777 (4,391)	0 (0)	1,777 (4,391)	1
4C. Sequoia Kings	67,566 (166,958)	0 (0)	67,566 (166,958)	1
4D. Kaweah River	3,663 (9,052)	0 (0)	3,663 (9,052)	1
5A. Blossom Lakes	2,069 (5,113)	0 (0)	2,069 (5,113)	1
5B. Coyote Creek	9,792 (24,197)	10 (24)	9,802 (24,222)	1, 5
5C. Mulkey Meadows	3,175 (7,846)	0 (0)	3,175 (7,846)	1, 3, 5
Total	89,627 (221,474)	10 (24)	89,637 (221,498)	

Note: Area sizes may not sum due to rounding.

[1] Area estimates in ha (ac) reflect the entire area within the designated critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2] Codes of known threats that may require special management considerations or protection of the essential physical or biological features:
1. Fish Persistence and Stocking
2. Water Diversions/Development
3. Inappropriate Grazing
4. Timber Harvest/Fuels Reduction
5. Recreation

We present brief descriptions of all subunits and reasons why they meet the definition of critical habitat for the northern DPS of the mountain yellow-legged frog below. Each unit and subunit designated as critical habitat for the northern DPS of the mountain yellow-legged frog contains aquatic habitat for breeding activities (PCE 1); and/or aquatic habitat to provide for shelter, foraging, predator avoidance, and dispersal during nonbreeding phases within their life history (PCE 2); and/or upland areas for feeding and movement, and catchment areas to provide for water supply and water quality (PCE 3); and is currently occupied by the species. Each unit and subunit contains the physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog, which may require special management (see the *Special Management Considerations or Protection* section of this final rule for a detailed discussion of the threats to the northern DPS of the mountain yellow-legged frog's habitat and potential management considerations).

Unit 4: Northern DPS of the Mountain Yellow-Legged Frog Clade 4

This unit represents a significant portion of the northern DPS of the mountain yellow-legged frog's range and reflects a core conservation area comprising the most robust remaining populations at higher densities (closer proximity) across the species' range. Unit 4, including all subunits, is an essential component to the entirety of this critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 4 of the northern DPS of the mountain yellow-legged frog distribution face significant threats from habitat fragmentation. The critical habitat within the unit is necessary to sustain viable populations within Clade 4 northern DPS of the mountain yellow-legged frog, which are at very low abundances. Unit 4 is crucial to the species for range expansion and recovery. In addition, Clade 4 includes the only remaining basins with high-density, lake-based populations that are not infected with Bd, and Bd will likely invade these uninfected populations in the near future unless habitat protections and special management considerations are implemented. It is necessary to broadly protect remnant habitat across the range of Clade 4 to facilitate species persistence and recovery.

Subunit 4A: Frypan Meadows

The Frypan Meadows subunit consists of approximately 1,585 ha (3,917 ac), and is located in Fresno County, California, approximately 4.3 km (2.7 mi) northwest of Highway 180. The Frypan Meadows subunit consists entirely of Federal land, located predominantly within the boundaries of the Kings Canyon National Park, with some overlap into the Monarch Wilderness within the Sequoia National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Frypan Meadows subunit may require special management considerations or protection due to fish persistence.

Subunit 4B: Granite Basin

The Granite Basin subunit consists of approximately 1,777 ha (4,391 ac), and is located in Fresno County, California, approximately 3.2 km (2 mi) north of Highway 180. The Granite Basin subunit consists entirely of Federal land, located within the boundaries of the Kings Canyon National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Granite Basin subunit may require special management considerations or protection due to fish persistence.

Subunit 4C: Sequoia Kings

The Sequoia Kings subunit consists of approximately 67,566 ha (166,958 ac), and is located in Fresno, Inyo and Tulare Counties, California, approximately 18 km (11.25 mi) west of Highway 395 and 4.4 km (2.75 mi) southeast of Highway 180. The Sequoia Kings subunit consists entirely of Federal land, all within Sequoia and Kings Canyon National Parks. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Sequoia Kings subunit may require special management considerations or protection due to the presence of introduced fishes and fish persistence.

Subunit 4D: Kaweah River

The Kaweah River subunit consists of approximately 3,663 ha (9,052 ac), and is located in Tulare County, California, approximately 2.8 km (1.75 mi) east of Highway 198. The Kaweah River subunit consists entirely of Federal land, all within Sequoia National Park. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Kaweah River subunit may require special management considerations or protection due to fish persistence.

Unit 5: Northern DPS of the Mountain Yellow-Legged Frog Clade 5

This unit represents the southern portion of the species' range and reflects unique ecological features within the range of the species because it comprises populations that are stream-based. Unit 5, including all subunits, is an essential component of the entirety of this critical habitat designation due to the unique genetic and distributional area this unit encompasses. The frog populations within Clade 5 of the northern DPS of the mountain yellow-legged frog's distribution are at very low numbers and face significant threats from habitat fragmentation. The critical habitat within the nit is necessary to sustain viable populations within Clade 5 of the northern DPS of the mountain yellow-legged frog, which are at very low abundances. Unit 5 is crucial to the species for range expansion and recovery.

Subunit 5A: Blossom Lakes

The Blossom Lakes subunit consists of approximately 2,069 ha (5,113 ac), and is located in Tulare County, California, approximately 0.8 km (0.5 mi) northwest of Silver Lake. The Blossom Lakes subunit consists entirely of Federal land, located within Sequoia National Park and Sequoia National Forest. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Blossom Lakes subunit may require special management considerations or protection due to fish persistence.

Subunit 5B: Coyote Creek

The Coyote Creek subunit consists of approximately 9,802 ha (24,222 ac), and is located in Tulare County, California, approximately 7.5 km (4.7 mi) south of Moraine Lake. Land ownership within this subunit consists of approximately 9,792 ha (24,197 ac) of Federal land and 10 ha (24 ac) of private land. The Coyote Creek subunit is predominantly within Sequoia National Park and Sequoia and Inyo National Forests, including area within the Golden Trout Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Coyote Creek subunit may require special management considerations or protection due to the presence of introduced fishes and recreational activities.

Subunit 5C: Mulkey Meadows

The Mulkey Meadows subunit consists of approximately 3,175 ha (7,846 ac), and is located in Tulare and Inyo Counties, California, approximately 10 km (6.25 mi) west of Highway 395. The Mulkey Meadows subunit consists entirely of Federal land, all within the Inyo National Forest, including area within the Golden Trout Wilderness. This subunit is considered to be within the geographical area occupied by the species at the time of listing, and it contains the physical or biological features essential to the conservation of the species, is currently functional habitat sustaining frogs, and is needed to provide for core surviving populations and their unique genetic heritage.

The physical or biological features essential to the conservation of the northern DPS of the mountain yellow-legged frog in the Mulkey Meadows subunit may require special management considerations or protection due to the presence of introduced fishes, inappropriate grazing activity, and recreational activities.

Yosemite Toad

We are designating 16 units as critical habitat for the Yosemite toad. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Yosemite toad. The 16 units we designate as critical habitat are listed in Table 7, and all 16 units are currently occupied.

TABLE 7—CRITICAL HABITAT UNITS FOR THE YOSEMITE TOAD (IN HECTARES AND ACRES), LAND OWNERSHIP, AND KNOWN THREATS THAT MAY AFFECT THE ESSENTIAL PHYSICAL OR BIOLOGICAL FEATURES FOR UNITS WITHIN THE GEOGRAPHICAL AREA OCCUPIED BY THE SPECIES AT THE TIME OF LISTING

Critical habitat unit	Federal Ha (Ac)	Private Ha (Ac)	Total[1] Ha (Ac)	Threats[2]
1. Blue Lakes/Mokelumne	13,896 (34,338)	987 (2,440)	14,884 (36,778)	2, 4, 5, 6
2. Leavitt Lake/Emigrant	30,789 (76,081)	13 (33)	30,803 (76,115)	2, 4, 5, 6
3. Rogers Meadow	11,797 (29,150)	0 (0)	11,797 (29,150)	5, 6
4. Hoover Lakes	2,303 (5,690)	0 (0)	2,303 (5,690)	4, 5, 6
5. Tuolumne Meadows/Cathedral	56,477 (139,557)	53 (131)	56,530 (139,688)	4, 5, 6
6. McSwain Meadows	6,472 (15,992)	0 (0)	6,472 (15,992)	4, 5, 6
7. Porcupine Flat	1,701 (4,204)	0 (0)	1,701 (4,204)	4, 5, 6
8. Westfall Meadows	1,859 (4,594)	0 (0)	1,859 (4,594)	4, 5, 6
9. Triple Peak	4,377 (10,816)	0 (0)	4,377 (10,816)	4, 5, 6
10. Chilnualna	6,212 (15,351)	0 (0)	6,212 (15,351)	4, 5, 6
11. Iron Mountain	7,404 (18,296)	302 (747)	7,706 (19,043)	2, 3, 4, 5, 6
12. Silver Divide	39,986 (98,807)	1 (2)	39,987 (98,809)	2, 4, 5, 6
13. Humphrys Basin/Seven Gables	20,658 (51,046)	8 (21)	20,666 (51,067)	4, 5, 6
14. Kaiser/Dusy	70,670 (174,629)	308 (761)	70,978 (175,390)	2, 3, 4, 5, 6
15. Upper Goddard Canyon	14,905 (36,830)	0 (0)	14,905 (36,830)	5, 6
16. Round Corral Meadow	12,613 (31,168)	97 (241)	12,711 (31,409)	2, 4, 5, 6
Total	302,118 (746,551)	1,771 (4,376)	303,889 (750,927)	

Note: Area sizes may not sum due to rounding.

[1] Area estimates in ha (ac) reflect the entire area within the designated critical habitat unit boundaries. Area estimates are rounded to the nearest whole integer that is equal to or greater than 1.

[2] Codes of known threats that may require special management considerations or protection of the essential physical or biological features:
1. Water Diversions
2. Inappropriate Grazing
3. Timber Harvest/Fuels Reduction
4. Recreation
5. Climate Change
6. Disease and Predation (threats of uncertain magnitude)

We present brief descriptions of all units and reasons why they meet the definition of critical habitat for the Yosemite toad below. Each unit designated as critical habitat for the Yosemite toad contains aquatic habitat for breeding activities (PCE 1) and/or upland habitat for foraging, dispersal, and overwintering activities (PCE 2), and is currently occupied by the species. Each unit contains the physical or biological features essential to the conservation of the Yosemite toad, which may require special management (see the *Special Management Considerations or Protection* section of this final rule for a detailed discussion of the threats to Yosemite toad habitat and potential management considerations).

Unit 1: Blue Lakes/Mokelumne

This unit consists of approximately 14,884 ha (36,778 ac), and is located in Alpine County, California, north and south of Highway 4. Land ownership within this unit consists of approximately 13,896 ha (34,338 ac) of Federal land and 987 ha (2,440 ac) of private land. The Blue Lakes/Mokelumne unit is predominantly within the Eldorado, Humboldt-Toiyabe, and Stanislaus National Forests, including lands within the Mokelumne and Carson-Iceberg Wilderness Areas. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit represents the northernmost portion of the Yosemite toad's range and constitutes an area of high genetic diversity. The Blue Lakes/Mokelumne unit is an essential component of the entirety of this critical habitat designation due to the genetic and distributional area this unit encompasses.

The physical or biological features essential to the conservation of the Yosemite toad in the Blue Lakes/Mokelumne unit may require special management considerations or protection due to inappropriate grazing and recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 2: Leavitt Lake/Emigrant

This unit consists of approximately 30,803 ha (76,115 ac), and is located near the border of Alpine, Tuolumne, and Mono Counties, California, predominantly south of Highway 108. Land ownership within this unit consists of approximately 30,789 ha (76,081 ac) of Federal land and 13 ha (33 ac) of private land. The Leavitt Lake/Emigrant unit is predominantly within the Stanislaus and Humboldt-Toiyabe National Forests, including lands within the Emigrant and Hoover Wilderness Areas, and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit is considered essential to the conservation of the species because it contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Leavitt Lake/Emigrant unit provides continuity of habitat between adjacent units, as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under a variety of climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Leavitt Lake/Emigrant unit may require special management considerations or protection due to inappropriate grazing and recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 3: Rogers Meadow

This unit consists of approximately 11,797 ha (29,150 ac) of Federal land located entirely within Humboldt-Toiyabe National Forest, including area within the Hoover Wilderness and Yosemite National Park. The Rogers Meadow unit is located along the border of Tuolumne and Mono Counties, California, north of Highway 120. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations, is located in a relatively pristine ecological setting, and represents a variety of habitat types utilized by the species. The Rogers Meadow unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under various climate regimes. This unit has no manageable threats (note that disease, predation, and climate change are not considered manageable threats). However, the physical or biological features with this unit require special protection because of the unit's value as occupied habitat that provides geographic connectivity to allow for Yosemite toad metapopulation persistence and resilience across the landscape to changing climate.

Unit 4: Hoover Lakes

This unit consists of approximately 2,303 ha (5,690 ac) of Federal land located entirely within the Inyo and Humboldt-Toiyabe National Forests, including area within the Hoover Wilderness and Yosemite National Park. The Hoover Lakes unit is located along the border of Mono and Tuolumne Counties, California, east of Highway 395. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains Yosemite toad populations with a high degree of genetic variability east of the Sierra crest within the central portion of the species' range. This unit contains habitats that are important to the Yosemite toad facing an uncertain climate future. The Hoover Lakes unit is an essential component of the entirety of this critical habitat designation because it provides a continuity of habitat between adjacent units, provides for the maintenance of genetic variation, and provides habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the Hoover Lakes unit may require special management considerations or protection due to recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 5: Tuolumne Meadows/Cathedral

This unit consists of approximately 56,530 ha (139,688 ac), and is located within Tuolumne, Mono, Mariposa, and Madera Counties, California, both north and south of Highway 120. Land ownership within this unit consists of approximately 56,477 ha (139,557 ac) of Federal land and 53 ha (131 ac) of private land. The Tuolumne Meadows/Cathedral unit is predominantly within the Inyo National Forest, with area within the Hoover Wilderness and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, has high genetic variability, and, due to the long-term occupancy of this unit, is considered an essential locality for Yosemite toad populations. The Tuolumne Meadows/Cathedral unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as providing for a variety of habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Tuolumne Meadows/Cathedral unit may require special management considerations or protection due to recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 6: McSwain Meadows

This unit consists of approximately 6,472 ha (15,992 ac) of Federal land located entirely within Yosemite National Park. The McSwain Meadows unit is located along the border of Tuolumne and Mariposa Counties, California, north and south of Highway 120 in the vicinity of Yosemite Creek. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This contains Yosemite toad populations located at the western edge of the range of the species within the central region of its geographic distribution. This area contains a concentration of Yosemite toad localities, as well as representing a wide variety of habitat types utilized by the species. This unit contains habitats that are essential to the Yosemite toad facing an uncertain climate future. The McSwain Meadows unit is an essential component of the entirety of this critical habitat designation because it provides a unique geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the McSwain Meadows unit may require special management considerations or protection due to recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 7: Porcupine Flat

This unit consists of approximately 1,701 ha (4,204 ac) of Federal land located entirely within Yosemite National Park. The Porcupine Flat unit is located within Mariposa County, California, north and south of Highway 120 and east of Yosemite Creek. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a concentration of Yosemite toad localities in proximity to the western edge of the species' range within the central region of its geographic distribution and provides a wide variety of habitat types utilized by the species. The Porcupine Flat unit is an essential component of the entirety of this critical habitat designation due to its proximity to Unit 6, which allows Unit 7 to provide continuity of habitat between Units 5 and 6, and its geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Porcupine Flat unit may require special management considerations or protection due to recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 8: Westfall Meadows

This unit consists of approximately 1,859 ha (4,594 ac) of Federal land located entirely within Yosemite National Park. The Westfall Meadows unit is located within Mariposa County, California, along Glacier Point Road. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. The Westfall Meadows unit contains Yosemite toad populations located at the western edge of the species' range within the central region of its geographic distribution, and south of the Merced River. Given that the Merced River acts as a dispersal barrier in this portion of Yosemite National Park, it is unlikely that there is genetic exchange between Unit 8 and Unit 6; thus Unit 8 represents an important geographic and genetic distribution of the species essential to conservation. This unit contains habitats essential to the conservation of the Yosemite toad, which faces an uncertain climate future. Unit 8 is an essential component of the entirety of this critical habitat designation because it provides a unique geographic distribution and variation in habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Westfall Meadows unit may require special management considerations or protection due to recreational activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 9: Triple Peak

This unit consists of approximately 4,377 ha (10,816 ac) of Federal land located entirely within the Sierra National Forest and Yosemite National Park. The Triple Peak unit is located within Madera County, California, between the Merced River and the South Fork Merced River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Triple Peak unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, specifically east-west connectivity, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Triple Peak unit may require special management considerations or protection due to recreational activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 10: Chilnualna

This unit consists of approximately 6,212 ha (15,351 ac) of Federal land located entirely within Yosemite National Park. The Chilnualna unit is located within Mariposa and Madera Counties, California, north of the South Fork Merced River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Chilnualna Unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Chilnualna unit may require special management considerations or protection due to recreational activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 11: Iron Mountain

This unit consists of approximately 7,706 ha (19,043 ac), and is located within Madera County, California, south of the South Fork Merced River. Land ownership within this unit consists of approximately 7,404 ha (18,296 ac) of Federal land and 302 ha (747 ac) of private land. The Iron Mountain unit is predominantly within the Sierra National Forest and Yosemite National Park. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. Further, this unit contains the southernmost habitat within the central portion of the range of the Yosemite toad. The Iron Mountain unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of Yosemite toad in the Iron Mountain unit may require special management considerations or protection due to inappropriate grazing, timber harvest and fuels reduction, and recreational activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 12: Silver Divide

This unit consists of approximately 39,987 ha (98,809 ac), and is located within Fresno, Inyo, Madera, and Mono Counties, California, southeast of the Middle Fork San Joaquin River. Land ownership within this unit consists of approximately 39,986 ha (98,807 ac) of Federal land and 1 ha (2 ac) of private land. The Silver Divide unit is predominantly within the Inyo and Sierra National Forests, including lands within the John Muir and Ansel Adams Wilderness Areas. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Silver Divide unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Silver Divide unit may require special management considerations or protection due to inappropriate grazing and recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 13: Humphrys Basin/Seven Gables

This unit consists of approximately 20,666 ha (51,067 ac), and is located within Fresno and Inyo Counties, California, northeast of the South Fork San Joaquin River. Land ownership within this unit consists of approximately 20,658 ha (51,046 ac) of Federal land and 8 ha (21 ac) of private land. The Humphrys Basin/Seven Gables unit is predominantly within the Inyo and Sierra National Forests, including area within the John Muir Wilderness. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations and represents a variety of habitat types utilized by the species. The Humphrys Basin/Seven Gables unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Humphrys Basin/Seven Gables unit may require special management considerations or protection due to recreation activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 14: Kaiser/Dusy

This unit consists of approximately 70,978 ha (175,390 ac), and is located in Fresno County, California, between the south fork of the San Joaquin River and the north fork of the Kings River. Land ownership within this unit consists of approximately 70,670 ha (174,629 ac) of Federal land and 308 ha (761 ac) of private land. The Kaiser/Dusy unit is predominantly within the Sierra National Forest. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and is located at the southwestern extent of the Yosemite toad range. The Kaiser/Dusy unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Kaiser/Dusy unit may require special management considerations or protection due to inappropriate grazing, timber harvest and fuels reduction, and recreational activities.

This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Unit 15: Upper Goddard Canyon

This unit consists of approximately 14,905 ha (36,830 ac) of Federal land located entirely within Kings Canyon National Park and the Sierra National Forest. The Upper Goddard Canyon unit is located within Fresno and Inyo Counties, California, at the upper reach of the South Fork San Joaquin River. This unit is currently occupied and contains the physical or biological features essential to the conservation of the species. This unit contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and is located at the easternmost extent within the southern portion of the Yosemite toad's range. The Upper Goddard Canyon unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, as well as habitat types necessary to sustain Yosemite toad populations under various climate regimes. This unit has no manageable threats (note that disease, predation, and climate change are not considered manageable threats). However, the area requires special protection because of its value as occupied habitat that provides geographic connectivity to allow for Yosemite toad metapopulation persistence and resilience across the landscape to changing climate.

Unit 16: Round Corral Meadow

This unit consists of approximately 12,711 ha (31,409 ac), and is located in Fresno County, California, south of the North Fork Kings River. Land ownership within this unit consists of approximately 12,613 ha (31,168 ac) of Federal land and 97 ha (241 ac) of private land. The Round Corral Meadow unit is predominantly within the Sierra National Forest. This unit contains a high concentration of Yosemite toad breeding locations, represents a variety of habitat types utilized by the species, and encompasses the southernmost portion of the range of the species. The Round Corral Meadow unit is an essential component of the entirety of this critical habitat designation because it provides continuity of habitat between adjacent units, represents the southernmost portion of the range, and provides habitat types necessary to sustain Yosemite toad populations under various climate regimes.

The physical or biological features essential to the conservation of the Yosemite toad in the Round Corral Meadow unit may require special management considerations or protection due to inappropriate grazing and recreational activities. This unit also has threats due to disease, predation, and climate change. Climate change is not considered a manageable threat. The need for special management considerations or protection due to disease and predation is currently undefined due to uncertainty regarding the extent and magnitude of these particular stressors.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species.

We published a final rule setting forth a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214), which became effective on March 14, 2016. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions not on Federal land that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Sierra Nevada yellow-legged frog and northern DPS mountain yellow-legged frog. If these actions occur at a scale or with a severity that detrimentally impacts the recovery potential of a unit, then the project may represent an adverse modification to critical habitat under the Act. Such actions are evaluated in the context of many factors, and any one alone may not necessarily lead to an adverse modification determination. These activities include, but are not limited to:

(1) Actions that significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into surface water or into connected ground water at a point source or by dispersed release (non-point source). These activities may alter water conditions beyond the tolerances of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog and result in direct or adverse effects to their critical habitat.

(2) Actions that would significantly increase sediment deposition within the stream channel, lake, or other aquatic feature, or disturb riparian foraging and dispersal habitat. Such activities could include, but are not limited to, excessive sedimentation from livestock overgrazing, road construction, channel alteration, timber harvest, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog by increasing the sediment deposition to levels that would adversely affect a frog's ability to complete its life cycle.

(3) Actions that would significantly alter channel or lake morphology, geometry, or water availability. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, development, mining, dredging, destruction of riparian vegetation, water diversion, water withdrawal, and hydropower generation. These activities may lead to changes to the hydrologic function of the channel or lake, and alter the timing, duration, waterflows, and levels that would degrade or eliminate mountain yellow-legged frog habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog.

(4) Actions that significantly reduce or limit the availability of breeding or overwintering aquatic habitat for the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog. Such activities could include, but are not limited to, stocking of introduced fishes, water diversion, water withdrawal, and hydropower generation. These actions could lead to the reduction in available breeding and overwintering habitat for the Sierra Nevada yellow-legged frog or northern DPS of the mountain yellow-legged frog through reduction in water depth necessary for the frog to complete its life cycle. Additionally, the stocking of introduced fishes could prevent or preclude recolonization of otherwise available breeding or overwintering habitats, which is necessary for range expansion and recovery of the Sierra Nevada yellow-legged frog and northern DPS of the mountain yellow-legged frog metapopulations.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Yosemite toad. These activities include, but are not limited to:

(1) Actions that significantly alter water chemistry or temperature. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents into the surface water or into connected ground water at a point source or by dispersed release (non-point source). These activities could alter water conditions beyond the tolerances of the Yosemite toad and result in direct or cumulative adverse effects to the critical habitat.

(2) Actions that would significantly increase sediment deposition within the wet meadow systems and other aquatic features utilized by Yosemite toad. Such activities could include, but are not limited to, excessive sedimentation from livestock overgrazing, road construction, inappropriate fuels management activities, channel alteration, inappropriate timber harvest activities, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the Yosemite toad by increasing the sediment deposition to levels that would adversely affect a toad's ability to complete its life cycle.

(3) Actions that would significantly alter wet meadow or pond morphology, geometry, or inundation period. Such activities could include, but are not limited to, livestock overgrazing, channelization, impoundment, road and bridge construction, mining, dredging, and inappropriate vegetation management. These activities may lead to changes in the hydrologic function of the wet meadow or pond and alter the timing, duration, waterflows, and levels that would degrade or eliminate Yosemite toad habitat. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the Yosemite toad.

(4) Actions that disturb or eliminate upland foraging or overwintering habitat, as well as dispersal habitat, for the Yosemite toad. Such activities could include, but are not limited to, livestock overgrazing, road construction, recreational development, timber harvest activities, unauthorized off-road vehicle or recreational use, and other watershed and floodplain disturbances. These activities could eliminate or reduce essential cover components in terrestrial habitats of the Yosemite toad and adversely affect a toad's ability to successfully overwinter or oversummer and may fragment habitat.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands with a completed INRMP within the critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum (IEM) and draft economic analysis (DEA) of the proposed critical habitat designation and related factors (Industrial Economics, Incorporated 2013). The analysis, dated August 27, 2013, was made available for public review from January 10, 2014, through March 11, 2014 (Industrial Economics, Incorporated 2013). The DEA addressed potential economic impacts of critical habitat designation for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad is summarized below and available in the Final Economic Analysis (FEA) (Industrial Economics, Incorporated 2015), available at *http://www.regulations.gov.*

All areas identified for critical habitat designation are occupied by or proximate to one or more of the listed amphibian species. The Service anticipates that conservation efforts recommended through section 7 consultation as a result of the listing of the species (*i.e.,* to avoid jeopardy) will, in most cases, also avoid adverse modification of critical habitat. In limited instances, the Service has indicated that adverse modification findings could generate an outcome of conservation measures different than those recommendations for jeopardy findings. At this time, however, the Service is unable to predict the types of projects that may require different conservation efforts. Thus, impacts occurring under such circumstances are not quantified in this analysis. We focus on quantifying incremental impacts associated with the additional administrative effort required when addressing potential adverse modification of critical habitat in section 7 consultation.

The DEA estimated total incremental impacts between $630,000 and $1.5 million. The FEA estimates slightly higher total costs: Between $760,000 and $1.7 million. The key findings are as follows: Low-end total present value impacts anticipated to result from the designation of all areas proposed as critical habitat for the amphibians are approximately $760,000 over 20 years, assuming a 7 percent discount rate ($960,000 assuming a 3 percent discount rate). High-end total present value impacts are approximately $1.7 million over 20 years, assuming a 7 percent discount rate ($2.3 million assuming a 3 percent discount rate). The actual impact for each activity likely falls between the two bounds considered; however information allowing for further refinement of the presented methodology presented is not readily available.

The increase in costs reflects the following updates/changes:

(1) Updated grazing/packstock analysis based on additional information provided by Humboldt-Toiyabe National Forest (HTNF) and public commenters.

(2) Expanded analytic time frame. The DEA estimated incremental impacts over a 17-year time frame. The FEA updated this analysis to use a 20-year analytic timeframe. The only activity that this had a material effect on is hydropower, for which the FEA forecasts annual consultations, thus expanding the time frame by 3 years and resulting in an increase in the number of consultations. This change also impacts annualized impact calculations.

(3) The FEA updated the first year of analysis to 2015, whereas the DEA had assumed 2014 as the first year of the analysis. This change does not affect the total number of consultations forecast, but changes the year in which consultations occur. In other words, we assume that consultations set for the first year of the analysis will still occur in the first year of the analysis (2015).

(4) The FEA updates the dollar year of the analysis from 2014 to 2015, and thus includes updating the GS salary rates from which the administrative costs are derived.

Exclusions Based on Economic Impacts

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad based on economic impacts.

A copy of the IEM, DEA, and FEA may be obtained from the Sacramento Fish and Wildlife Office (2800 Cottage Way, Room W–2605, Sacramento CA, 95825, or see *http://www.fws.gov/sacramento/*) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense in the proposed critical habitat designation where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad are owned or exclusively managed by the Department of Defense or Department of Homeland Security. The area that is managed by the Humboldt-Toiyabe National Forest and used by the USMC for high-altitude training purposes via special use permit can be successfully managed through a completed INRMP with ongoing uses; therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security or homeland security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted HCPs or other approved management plans for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad, and the final designation does not include any tribal lands or tribal trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising her discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with the Sierra Nevada yellow-legged frog's, northern DPS of the mountain yellow-legged frog's, and Yosemite toad's conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is

provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because only a tiny fraction of designated critical habitat is under small government jurisdiction. Further, the designation of critical habitat imposes no obligations on State or local governments. It will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. Incremental impacts may occur due to administrative costs of section 7 consultations for project activities; however, these are not expected to significantly affect small governments as they are expected to be borne by the Federal Government and CDFW. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in a takings implications assessment. Based on the best available information, the assessment concludes that this designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We received comments from the California Department of Fish and Wildlife (CDFW), and we have addressed them in the Summary of Comments and Recommendations section of this rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur). Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, and Yosemite toad. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Sierra Nevada yellow-legged frog, northern DPS of the mountain yellow-legged frog, or Yosemite toad on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for "Frog, mountain yellow-legged [Northern California DPS]", "Frog, Sierra Nevada yellow-legged", and "Toad, Yosemite" under AMPHIBIANS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * * * *				
AMPHIBIANS				
* * * * * * *				
Frog, mountain yellow-legged [Northern California DPS].	*Rana muscosa*	Northern California DPS—U.S.A., northern California.	E	79 FR 24255; 4/29/2014 50 CFR 17.95(d).^{CH}
* * * * * * *				
Frog, Sierra Nevada yellow-legged.	*Rana sierrae*	Wherever found	E	79 FR 24255; 4/29/2014 50 CFR 17.95(d).^{CH}
* * * * * * *				
Toad, Yosemite	*Anaxyrus canorus*	Wherever found	T	79 FR 24255; 4/29/2014 50 CFR 17.95(d).^{CH}
* * * * * * *				

■ 3. In § 17.95, amend paragraph (d) by adding entries for "Mountain Yellow-legged Frog (*Rana muscosa*), Northern California DPS", "Sierra Nevada Yellow-legged Frog (*Rana sierrae*)", and "Yosemite Toad (*Anaxyrus canorus*)" in the same alphabetical order that these species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Mountain Yellow-Legged Frog (*Rana muscosa*), Northern California DPS

(1) Critical habitat units are depicted for Fresno, Inyo and Tulare Counties, California, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the

conservation of the northern DPS of the mountain yellow-legged frog consist of:

(i) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(A) For lakes, be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 meters (m) (5.6 feet (ft)), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(B) Maintain a natural flow pattern, including periodic flooding, and have functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(C) Be free of introduced predators.

(D) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(E) Contain:

(*1*) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(*2*) Shallower microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(*3*) Open gravel banks and rocks or other structures projecting above or just beneath the surface of the water for adult sunning posts;

(*4*) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators; and

(*5*) Sufficient food resources to provide for tadpole growth and development.

(ii) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(A) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(B) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(C) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators;

(D) Sufficient food resources to support juvenile and adult foraging;

(E) Overwintering refugia, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within bedrock, in and near shore; and/or

(F) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(iii) *Upland areas.*

(A) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(*1*) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(*2*) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(*3*) For areas between proximate (within 300 m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

(*4*) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

(B) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries of designated critical habitat on September 26, 2016.

(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10.2.1 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on *http://regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site (*http://www.fws.gov/sacramento*), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825.

(5) Index map for northern DPS of the mountain yellow-legged frog critical habitat follows:

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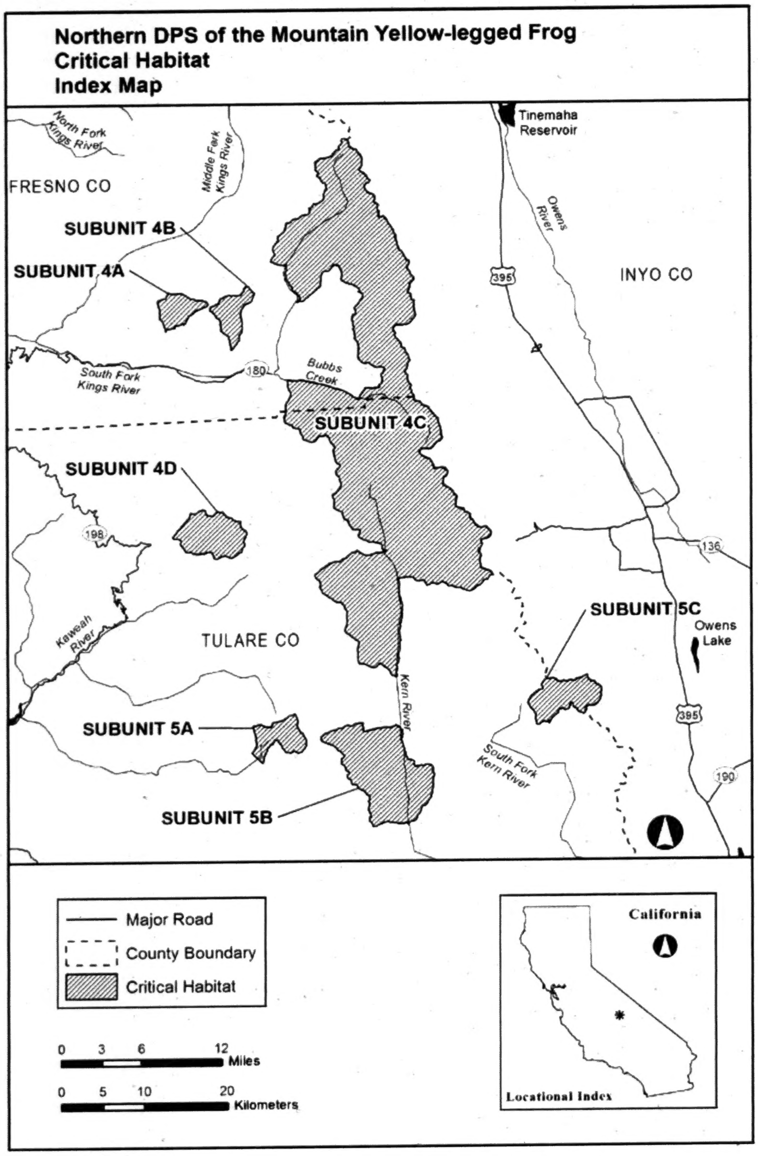
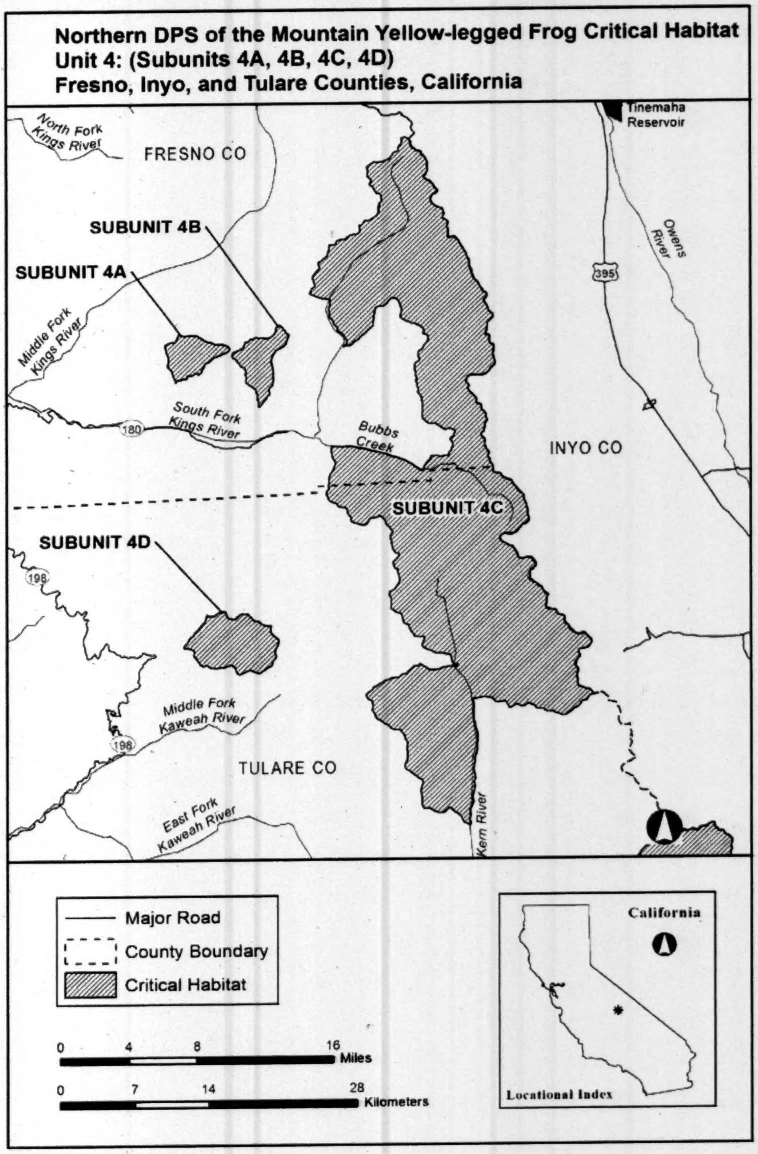
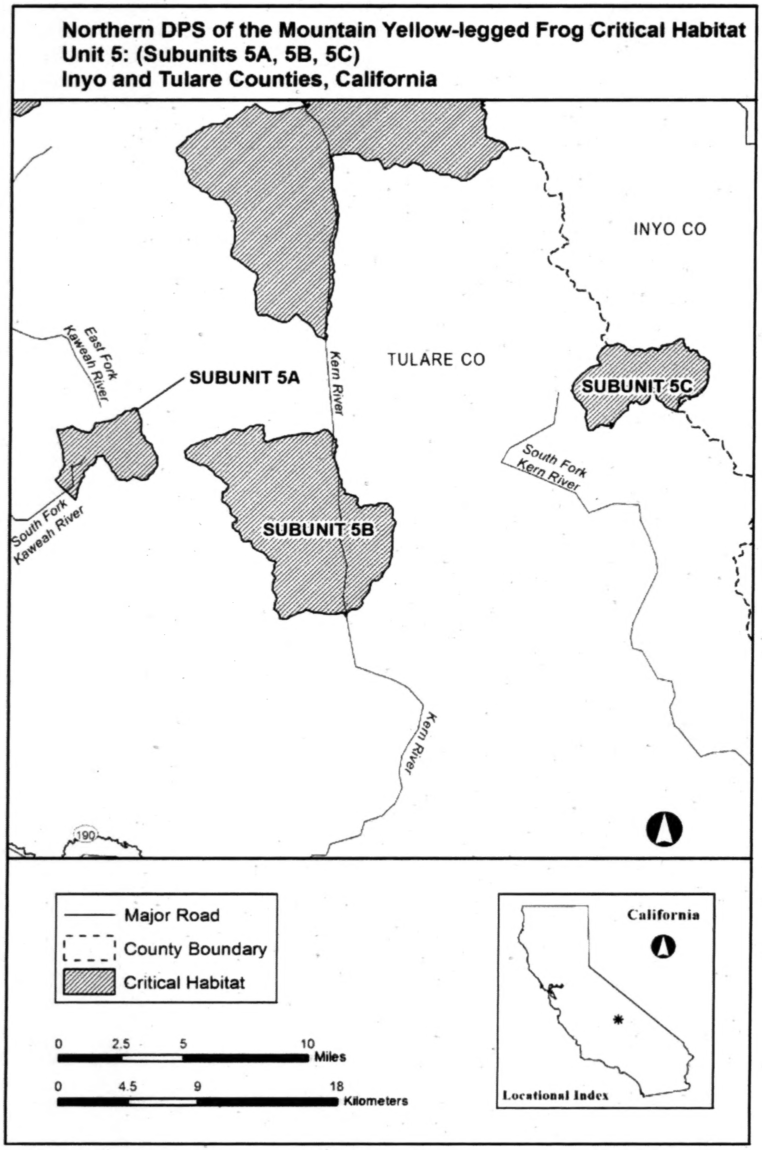

Northern DPS of the Mountain Yellow-legged Frog
Critical Habitat
Index Map
North Fork Kings River
Middle Fork Kings River
FRESNO CO
SUBUNIT 4B
SUBUNIT 4A
Tinemaha Reservoir
Owens River
395
INYO CO
South Fork Kings River
180
Bubbs Creek
SUBUNIT 4C
SUBUNIT 4D
198
136
Kaweah River
TULARE CO
SUBUNIT 5C
Owens Lake
Kern River
SUBUNIT 5A
South Fork Kern River
190
SUBUNIT 5B
Major Road
County Boundary
Critical Habitat
0 3 6 12 Miles
0 5 10 20 Kilometers
California
Locational Index

(6) Unit 4 (Subunits 4A, 4B, 4C, 4D), Fresno, Inyo, and Tulare Counties, California. Map follows:


Northern DPS of the Mountain Yellow-legged Frog Critical Habitat
Unit 4: (Subunits 4A, 4B, 4C, 4D)
Fresno, Inyo, and Tulare Counties, California
North Fork Kings River
FRESNO CO
Tinemaha Reservoir
SUBUNIT 4B
SUBUNIT 4A
Middle Fork Kings River
Owens River
395
South Fork Kings River
180
Bubbs Creek
INYO CO
SUBUNIT 4C
SUBUNIT 4D
198
Middle Fork Kaweah River
198
TULARE CO
East Fork Kaweah River
Kern River
Major Road
County Boundary
Critical Habitat
0 4 8 16 Miles
0 7 14 28 Kilometers
California
Locational Index

(7) Unit 5 (Subunits 5A, 5B, 5C), Tulare and Inyo Counties, California. Map follows:


Northern DPS of the Mountain Yellow-legged Frog Critical Habitat
Unit 5: (Subunits 5A, 5B, 5C)
Inyo and Tulare Counties, California
INYO CO
TULARE CO
SUBUNIT 5A
SUBUNIT 5B
SUBUNIT 5C
East Fork Kaweah River
South Fork Kaweah River
Kern River
South Fork Kern River
190
Major Road
County Boundary
Critical Habitat
0 2.5 5 10 Miles
0 4.5 9 18 Kilometers
California
Locational Index

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* * * * *

Sierra Nevada Yellow-Legged Frog (*Rana sierrae*)

(1) Critical habitat units are depicted for Lassen, Plumas, Sierra, Nevada, Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Sierra Nevada yellow-legged frog consist of:

(i) *Aquatic habitat for breeding and rearing.* Habitat that consists of permanent water bodies, or those that are either hydrologically connected with, or close to, permanent water bodies, including, but not limited to, lakes, streams, rivers, tarns, perennial creeks (or permanent plunge pools within intermittent creeks), pools (such as a body of impounded water contained above a natural dam), and other forms of aquatic habitat. This habitat must:

(A) For lakes, be of sufficient depth not to freeze solid (to the bottom) during the winter (no less than 1.7 meters (m) (5.6 feet (ft)), but generally greater than 2.5 m (8.2 ft), and optimally 5 m (16.4 ft) or deeper (unless some other refuge from freezing is available)).

(B) Maintain a natural flow pattern, including periodic flooding, and have functional community dynamics in order to provide sufficient productivity and a prey base to support the growth and development of rearing tadpoles and metamorphs.

(C) Be free of introduced predators.

(D) Maintain water during the entire tadpole growth phase (a minimum of 2 years). During periods of drought, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they may still be considered essential breeding habitat if they provide sufficient habitat in most years to foster recruitment within the reproductive lifespan of individual adult frogs.

(E) Contain:

(*1*) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(*2*) Shallower microhabitat with solar exposure to warm lake areas and to foster primary productivity of the food web;

(*3*) Open gravel banks and rocks or other structures projecting above or just beneath the surface of the water for adult sunning posts;

(*4*) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators; and

(*5*) Sufficient food resources to provide for tadpole growth and development.

(ii) *Aquatic nonbreeding habitat (including overwintering habitat).* This habitat may contain the same characteristics as aquatic breeding and rearing habitat (often at the same locale), and may include lakes, ponds, tarns, streams, rivers, creeks, plunge pools within intermittent creeks, seeps, and springs that may not hold water long enough for the species to complete its aquatic life cycle. This habitat provides for shelter, foraging, predator avoidance, and aquatic dispersal of juvenile and adult mountain yellow-legged frogs. Aquatic nonbreeding habitat contains:

(A) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel, cobble, rock, and boulders (for basking and cover);

(B) Open gravel banks and rocks projecting above or just beneath the surface of the water for adult sunning posts;

(C) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, or rocks and vegetation to provide cover from predators;

(D) Sufficient food resources to support juvenile and adult foraging;

(E) Overwintering refugia, where thermal properties of the microhabitat protect hibernating life stages from winter freezing, such as crevices or holes within bedrock, in and near shore; and/or

(F) Streams, stream reaches, or wet meadow habitats that can function as corridors for movement between aquatic habitats used as breeding or foraging sites.

(iii) *Upland areas.*

(A) Upland areas adjacent to or surrounding breeding and nonbreeding aquatic habitat that provide area for feeding and movement by mountain yellow-legged frogs.

(*1*) For stream habitats, this area extends 25 m (82 ft) from the bank or shoreline.

(*2*) In areas that contain riparian habitat and upland vegetation (for example, mixed conifer, ponderosa pine, montane conifer, and montane riparian woodlands), the canopy overstory should be sufficiently thin (generally not to exceed 85 percent) to allow sunlight to reach the aquatic habitat and thereby provide basking areas for the species.

(*3*) For areas between proximate (within 300 m (984 ft)) water bodies (typical of some high mountain lake habitats), the upland area extends from the bank or shoreline between such water bodies.

(*4*) Within mesic habitats such as lake and meadow systems, the entire area of physically contiguous or proximate habitat is suitable for dispersal and foraging.

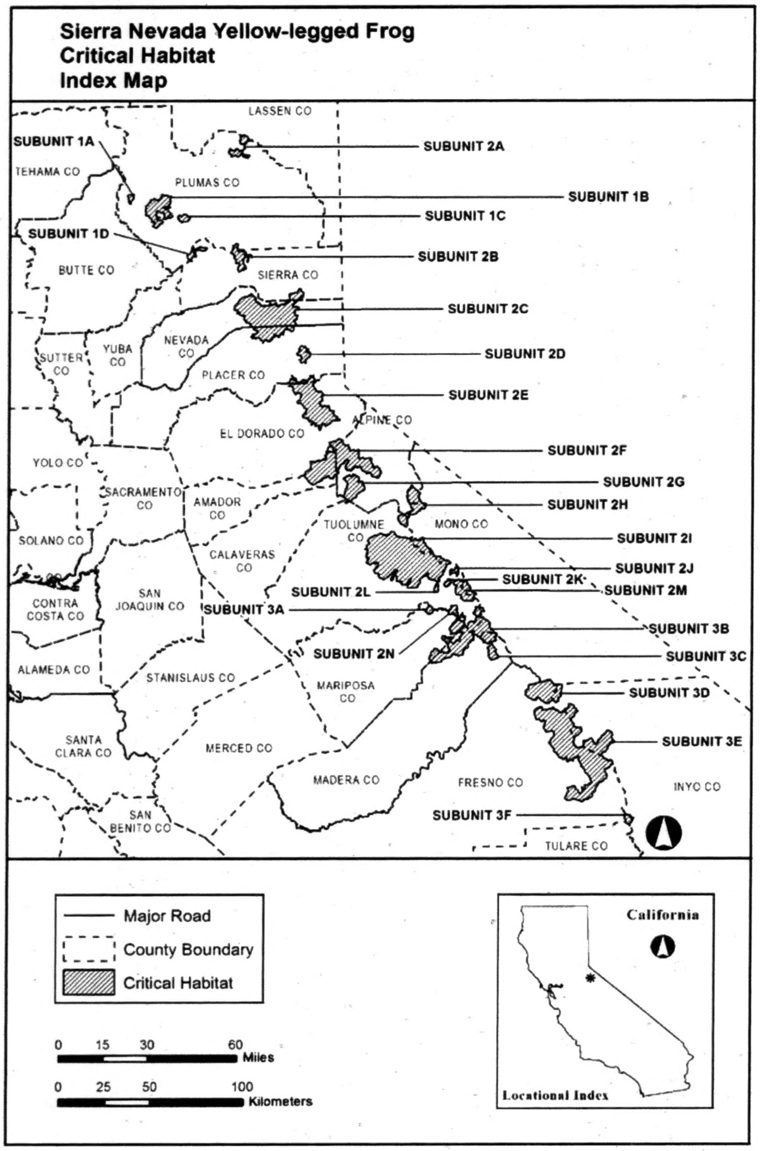
(B) Upland areas (catchments) adjacent to and surrounding both breeding and nonbreeding aquatic habitat that provide for the natural hydrologic regime (water quantity) of aquatic habitats. These upland areas should also allow for the maintenance of sufficient water quality to provide for the various life stages of the frog and its prey base.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries of designated critical habitat on September 26, 2016.

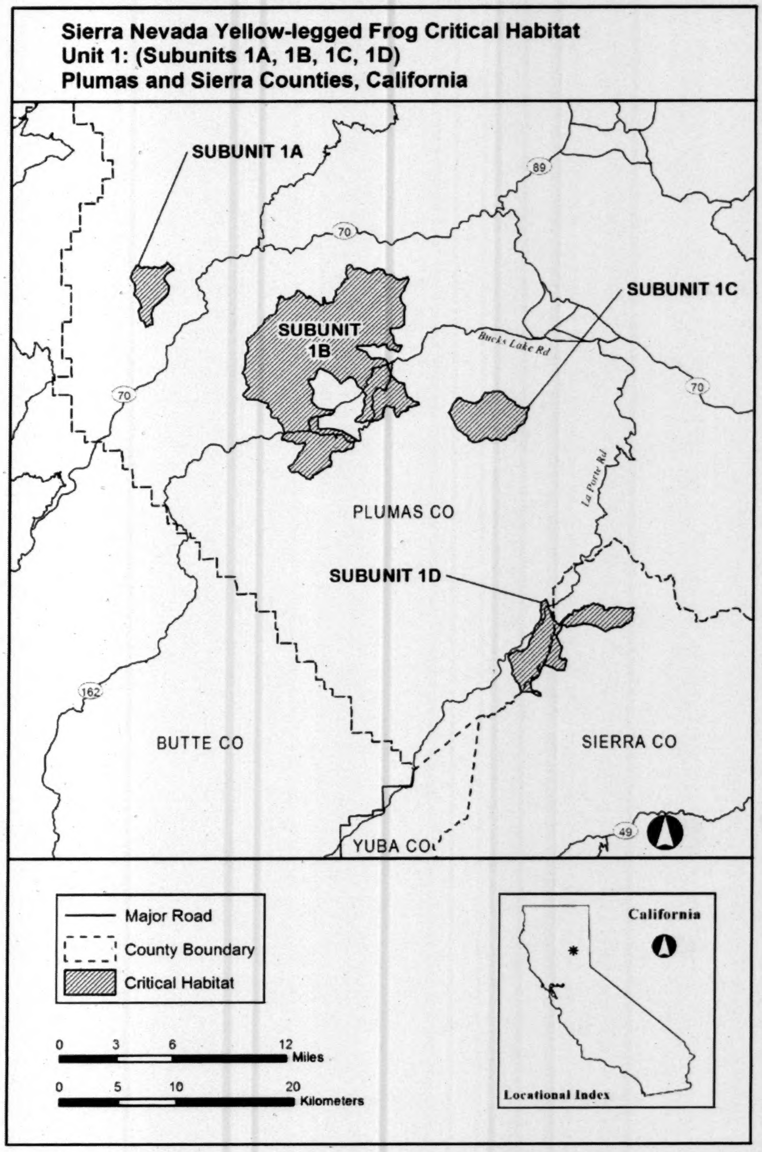
(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10.2.1 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on *http://regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site (*http://www.fws.gov/sacramento*), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825.

(5) Index map for Sierra Nevada yellow-legged frog critical habitat follows:

BILLING CODE 4333–15–P


Sierra Nevada Yellow-legged Frog
Critical Habitat
Index Map
LASSEN CO
SUBUNIT 1A
SUBUNIT 2A
TEHAMA CO
PLUMAS CO
SUBUNIT 1B
SUBUNIT 1C
SUBUNIT 1D
SUBUNIT 2B
BUTTE CO
SIERRA CO
SUBUNIT 2C
YUBA CO
NEVADA CO
SUTTER CO
SUBUNIT 2D
PLACER CO
SUBUNIT 2E
ALPINE CO
EL DORADO CO
SUBUNIT 2F
YOLO CO
SUBUNIT 2G
SACRAMENTO CO
AMADOR CO
SUBUNIT 2H
TUOLUMNE CO
MONO CO
SOLANO CO
SUBUNIT 2I
CALAVERAS CO
SUBUNIT 2J
SUBUNIT 2K
SUBUNIT 2L
SUBUNIT 2M
CONTRA COSTA CO
SAN JOAQUIN CO
SUBUNIT 3A
SUBUNIT 3B
SUBUNIT 2N
SUBUNIT 3C
ALAMEDA CO
STANISLAUS CO
MARIPOSA CO
SUBUNIT 3D
SANTA CLARA CO
MERCED CO
SUBUNIT 3E
MADERA CO
FRESNO CO
INYO CO
SAN BENITO CO
SUBUNIT 3F
TULARE CO
Major Road
County Boundary
Critical Habitat
0 15 30 60 Miles
0 25 50 100 Kilometers
California
Locational Index

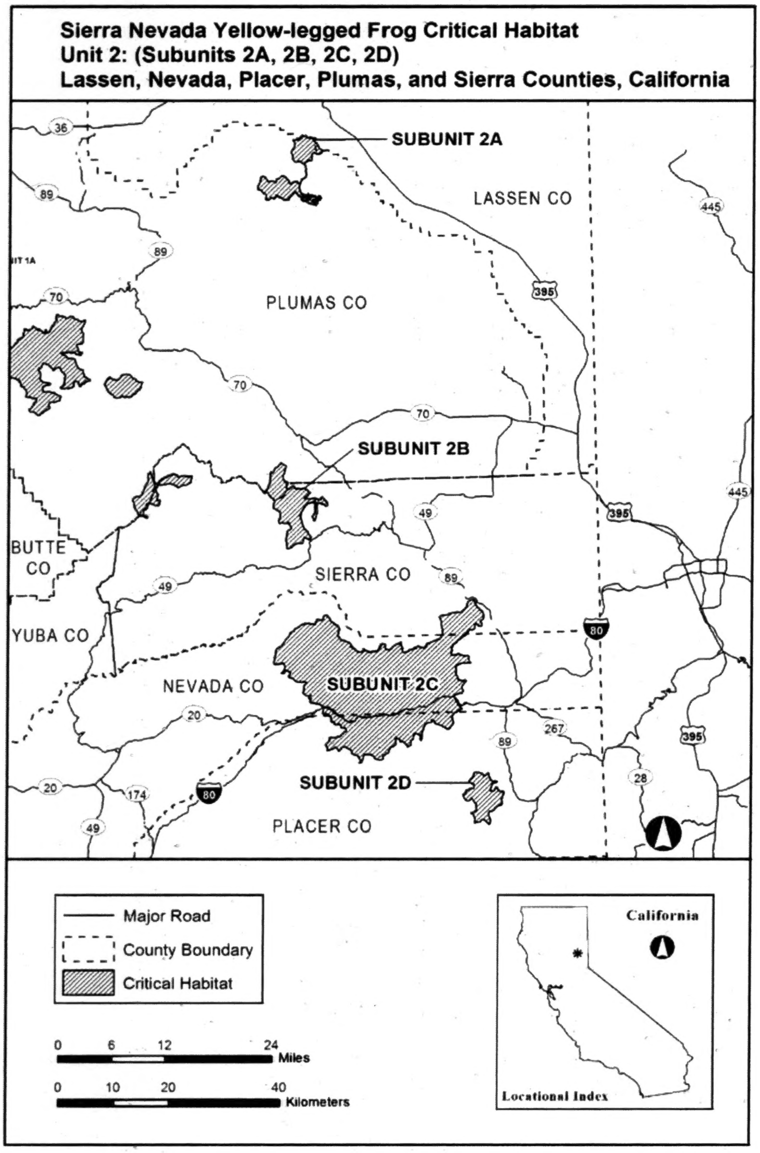
(6) Unit 1 (Subunits 1A, 1B, 1C, 1D), Plumas, and Sierra Counties, California. Map follows:



Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 1: (Subunits 1A, 1B, 1C, 1D)
Plumas and Sierra Counties, California

SUBUNIT 1A
SUBUNIT 1B
SUBUNIT 1C
SUBUNIT 1D
89
70
70
70
162
49
Bucks Lake Rd
La Porte Rd
PLUMAS CO
BUTTE CO
SIERRA CO
YUBA CO
Major Road
County Boundary
Critical Habitat
0 3 6 12 Miles
0 5 10 20 Kilometers
California
Locational Index

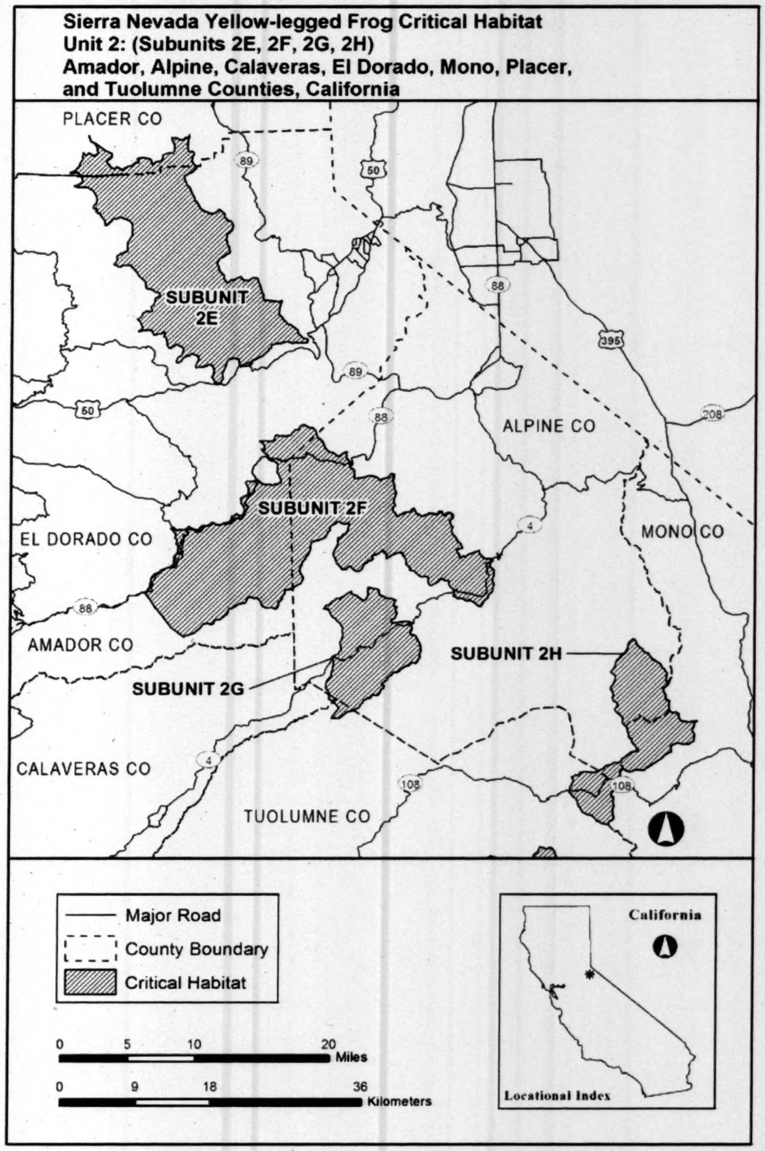
(7) Unit 2 (Subunits 2A, 2B, 2C, 2D), Lassen, Plumas, Sierra, Nevada, and Placer Counties, California. Map follows:



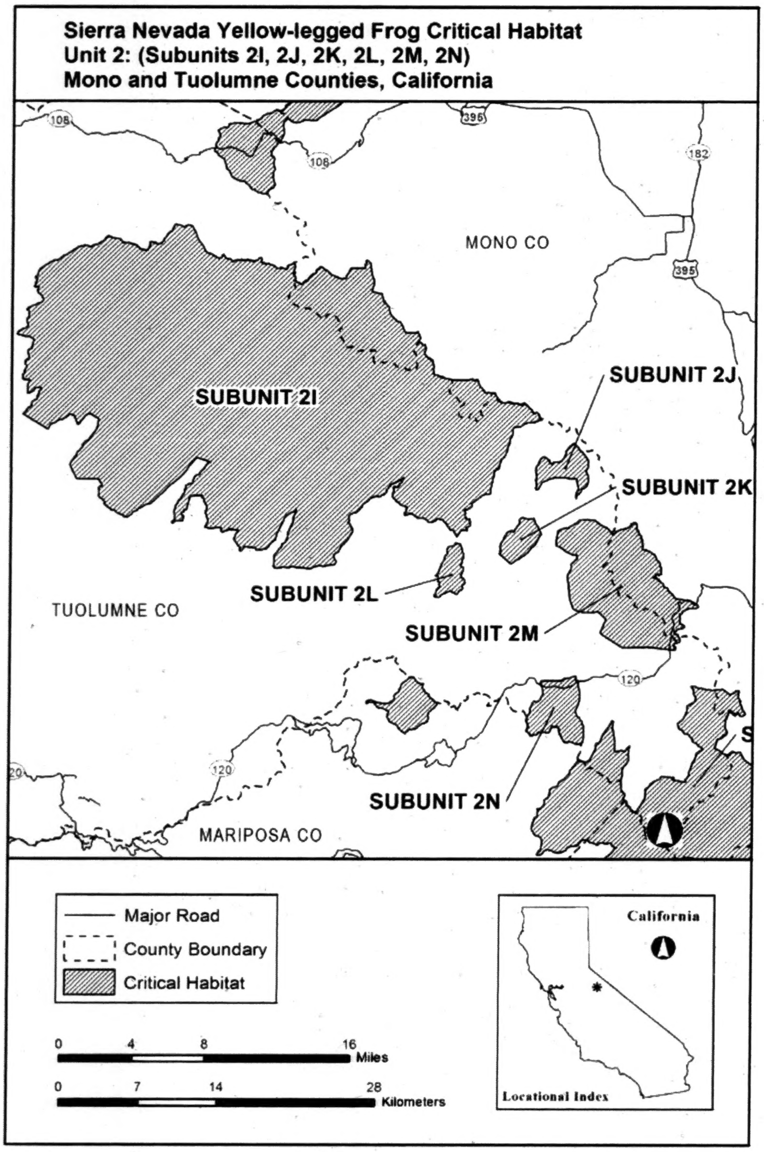
Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 2: (Subunits 2A, 2B, 2C, 2D)
Lassen, Nevada, Placer, Plumas, and Sierra Counties, California

SUBUNIT 2A
LASSEN CO
PLUMAS CO
SUBUNIT 2B
BUTTE CO
SIERRA CO
YUBA CO
NEVADA CO
SUBUNIT 2C
SUBUNIT 2D
PLACER CO
36
89
70
49
20
174
80
395
445
267
28
Major Road
County Boundary
Critical Habitat
0 6 12 24 Miles
0 10 20 40 Kilometers
California
Locational Index

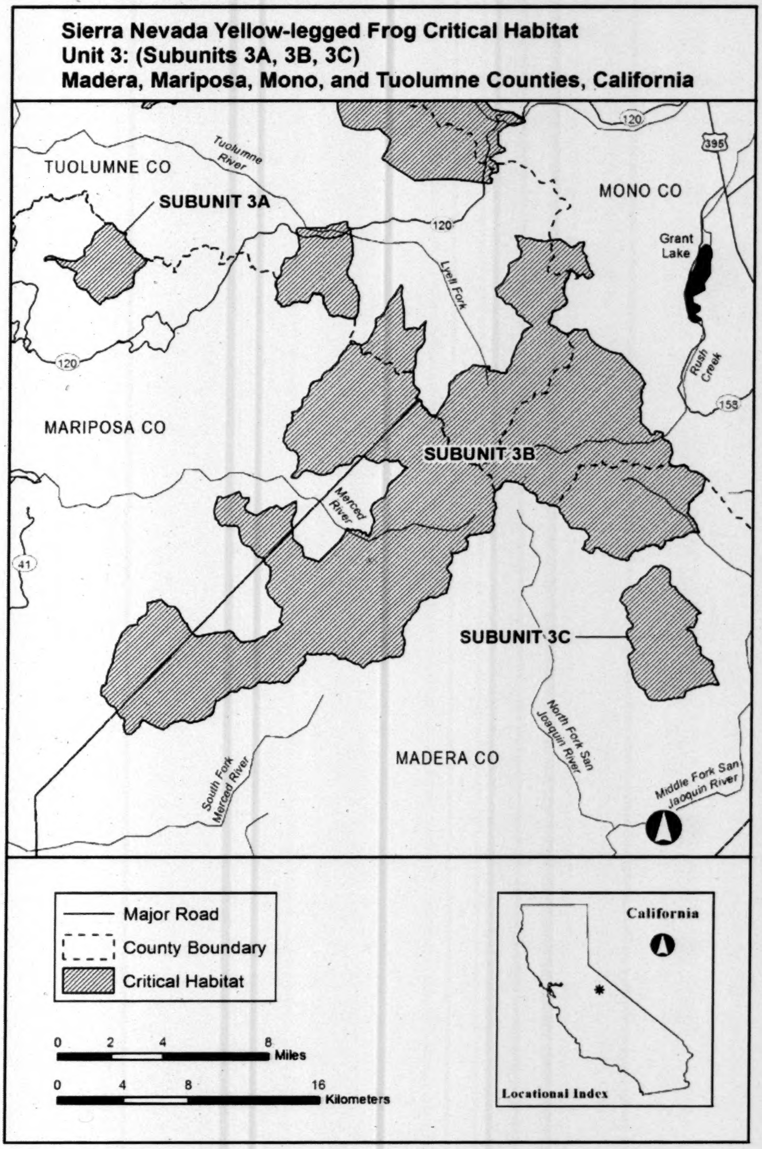
(8) Unit 2 (Subunits 2E, 2F, 2G, 2H), Placer, El Dorado, Amador, Alpine, Calaveras, Tuolumne, and Mono Counties, California. Map follows:


Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 2: (Subunits 2E, 2F, 2G, 2H)
Amador, Alpine, Calaveras, El Dorado, Mono, Placer, and Tuolumne Counties, California
PLACER CO
EL DORADO CO
AMADOR CO
CALAVERAS CO
TUOLUMNE CO
ALPINE CO
MONO CO
SUBUNIT 2E
SUBUNIT 2F
SUBUNIT 2G
SUBUNIT 2H
89
50
88
395
208
4
108
Major Road
County Boundary
Critical Habitat
0
5
10
20
Miles
0
9
18
36
Kilometers
California
Locational Index

(9) Unit 2 (Subunits 2I, 2J, 2K, 2L, 2M, 2N), Tuolumne and Mono Counties, California. Map follows:

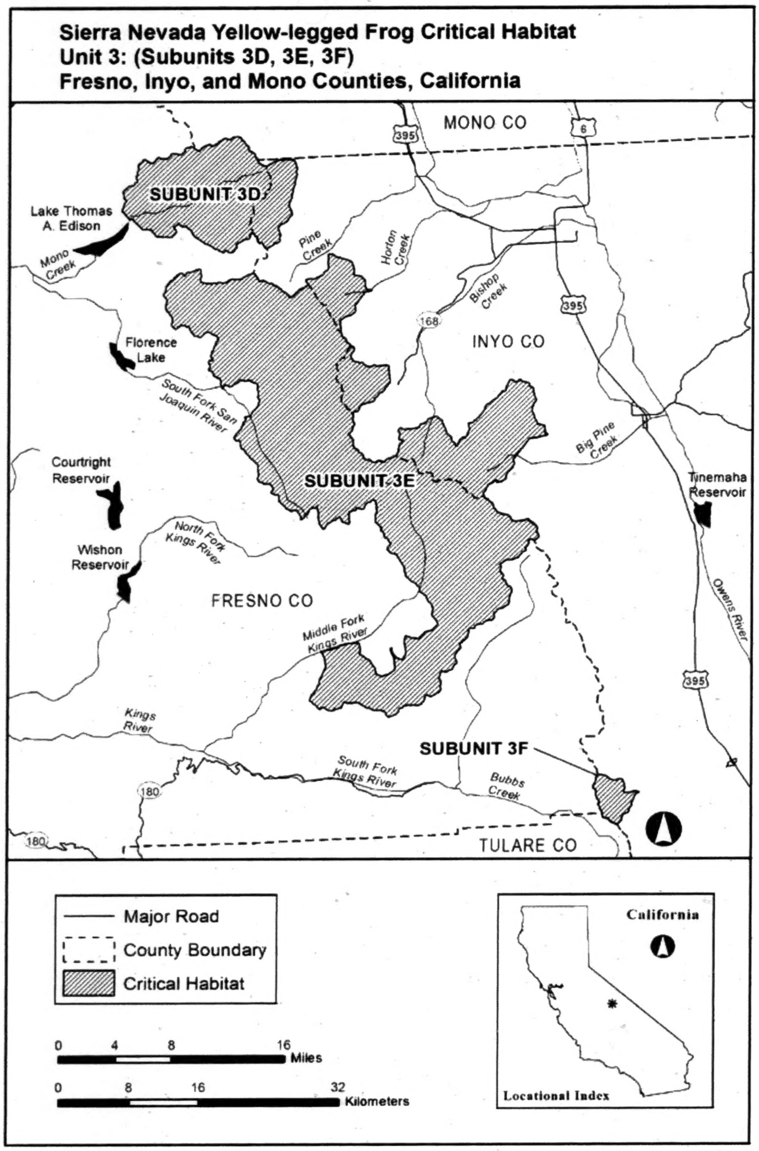

Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 2: (Subunits 2I, 2J, 2K, 2L, 2M, 2N)
Mono and Tuolumne Counties, California
108
395
182
MONO CO
SUBUNIT 2I
SUBUNIT 2J
SUBUNIT 2K
SUBUNIT 2L
SUBUNIT 2M
SUBUNIT 2N
TUOLUMNE CO
MARIPOSA CO
120
Major Road
County Boundary
Critical Habitat
0 4 8 16 Miles
0 7 14 28 Kilometers
California
Locational Index

(10) Unit 3 (Subunits 3A, 3B, 3C), Tuolumne, Mariposa, Mono, and Madera Counties, California. Map follows:


Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 3: (Subunits 3A, 3B, 3C)
Madera, Mariposa, Mono, and Tuolumne Counties, California

TUOLUMNE CO
Tuolumne River
SUBUNIT 3A
120
395
MONO CO
Grant Lake
Lyell Fork
Rush Creek
158
MARIPOSA CO
SUBUNIT 3B
Merced River
41
SUBUNIT 3C
North Fork San Joaquin River
MADERA CO
South Fork Merced River
Middle Fork San Joaquin River
Major Road
County Boundary
Critical Habitat
0 2 4 8 Miles
0 4 8 16 Kilometers
California
Locational Index

(11) Unit 3 (Subunits 3D, 3E, 3F), Mono, Fresno, and Inyo Counties, California. Map follows:


Sierra Nevada Yellow-legged Frog Critical Habitat
Unit 3: (Subunits 3D, 3E, 3F)
Fresno, Inyo, and Mono Counties, California
MONO CO
395
6
SUBUNIT 3D
Lake Thomas A. Edison
Mono Creek
Pine Creek
Horton Creek
Bishop Creek
168
395
INYO CO
Florence Lake
South Fork San Joaquin River
Big Pine Creek
Courtright Reservoir
SUBUNIT 3E
Tinemaha Reservoir
Wishon Reservoir
North Fork Kings River
FRESNO CO
Middle Fork Kings River
Owens River
395
Kings River
SUBUNIT 3F
South Fork Kings River
Bubbs Creek
180
180
TULARE CO
Major Road
County Boundary
Critical Habitat
0
4
8
16
Miles
0
8
16
32
Kilometers
California
Locational Index

* * * * *

Yosemite Toad (*Anaxyrus canorus*)

(1) Critical habitat units are depicted for Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California, on the maps in this entry.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Yosemite toad consist of two components:

(i) *Aquatic breeding habitat.*

(A) This habitat consists of bodies of fresh water, including wet meadows, slow-moving streams, shallow ponds, spring systems, and shallow areas of lakes, that:

(*1*) Are typically (or become) inundated during snowmelt;

(*2*) Hold water for a minimum of 5 weeks, but more typically 7 to 8 weeks; and

(*3*) Contain sufficient food for tadpole development.

(B) During periods of drought or less than average rainfall, these breeding sites may not hold surface water long enough for individual Yosemite toads to complete metamorphosis, but they are still considered essential breeding habitat because they provide habitat in most years.

(ii) *Upland areas.*

(A) This habitat consists of areas adjacent to or surrounding breeding habitat up to a distance of 1.25 kilometers (0.78 miles) in most cases (that is, depending on surrounding landscape and dispersal barriers), including seeps, springheads, talus and boulders, and areas that provide:

(*1*) Sufficient cover (including rodent burrows, logs, rocks, and other surface objects) to provide summer refugia,

(*2*) Foraging habitat,

(*3*) Adequate prey resources,

(*4*) Physical structure for predator avoidance, (*5*) Overwintering refugia for juvenile and adult Yosemite toads,

(*6*) Dispersal corridors between aquatic breeding habitats,

(*7*) Dispersal corridors between breeding habitats and areas of suitable summer and winter refugia and foraging habitat, and/or

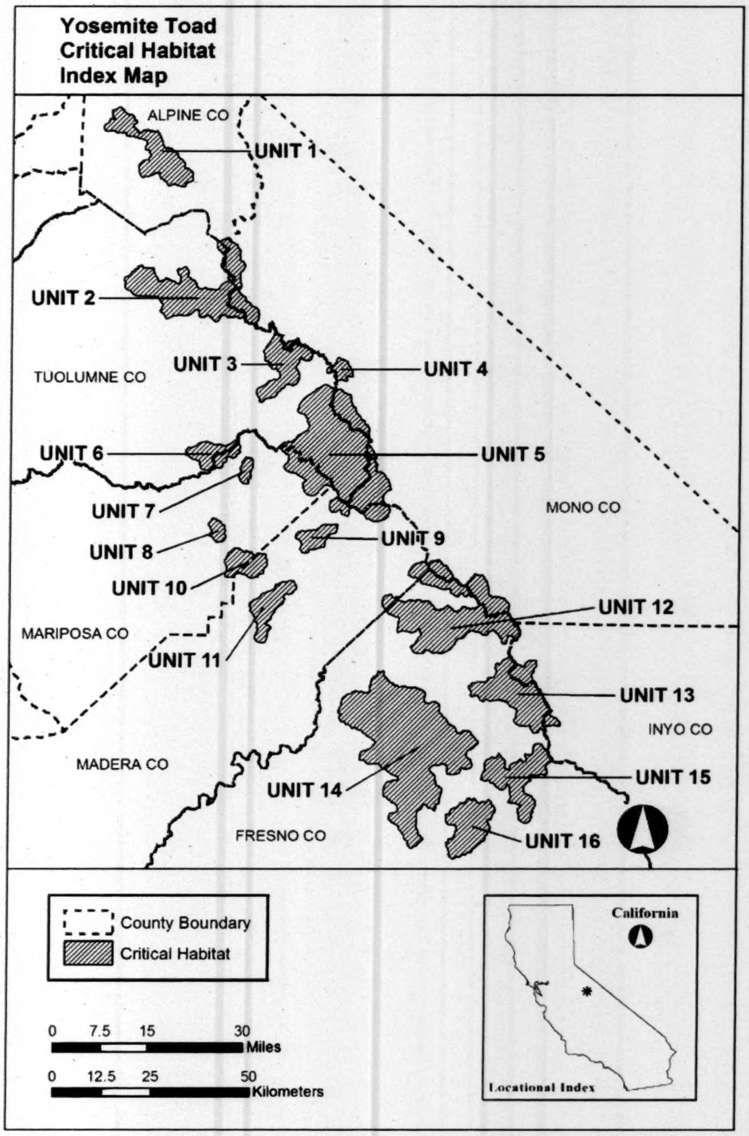
(*8*) The natural hydrologic regime of aquatic habitats (the catchment).

(B) These upland areas should also maintain sufficient water quality to provide for the various life stages of the Yosemite toad and its prey base.

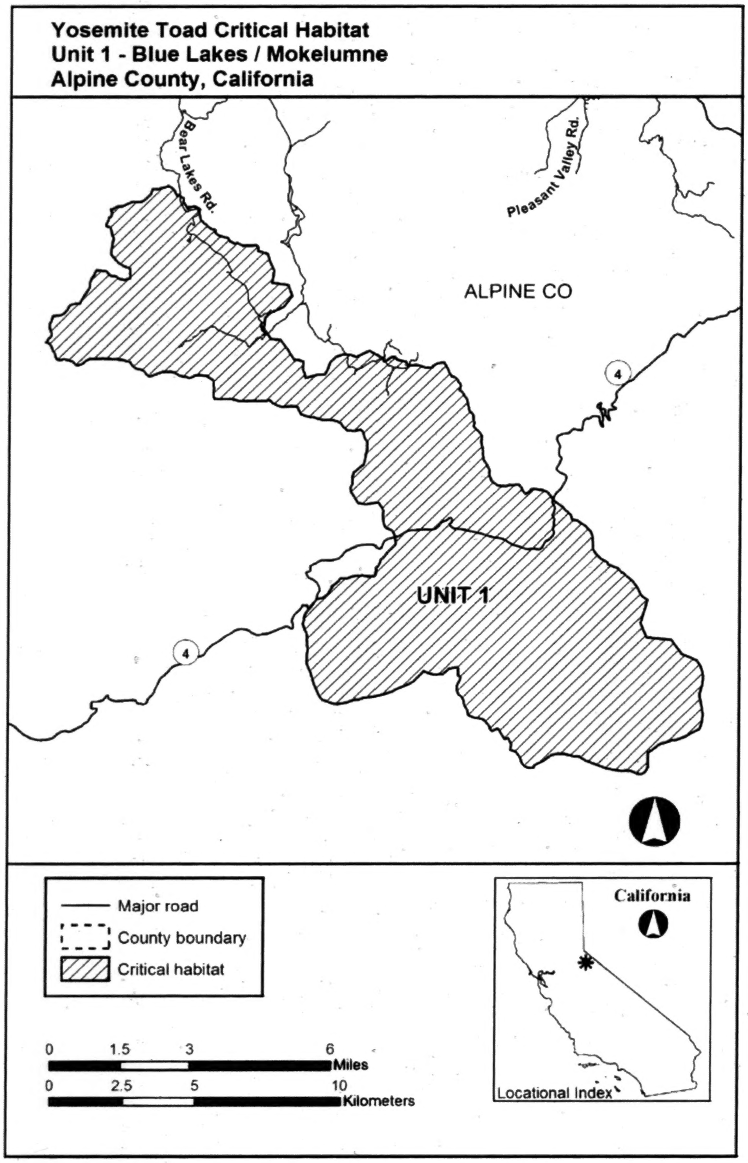
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries of designated critical habitat on September 26, 2016.

(4) *Critical habitat map units.* The critical habitat subunit maps were originally created using ESRI's ArcGIS Desktop 10 software and then exported as .emf files. All maps are in the North American Datum of 1983 (NAD83), Universal Transverse Mercator (UTM) Zone 10N. The California County Boundaries dataset (Teale Data Center), and the USA Minor Highways, USA Major Roads, and USA Rivers and Streams layers (ESRI's 2010 StreetMap Data) were incorporated as base layers to assist in the geographic location of the critical habitat subunits. The coordinates or plot points or both on which each map is based are available to the public on *http://regulations.gov* at Docket No. FWS–R8–ES–2012–0074, on our Internet site (*http://www.fws.gov/sacramento*), and at the Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W–2605, Sacramento, CA 95825.

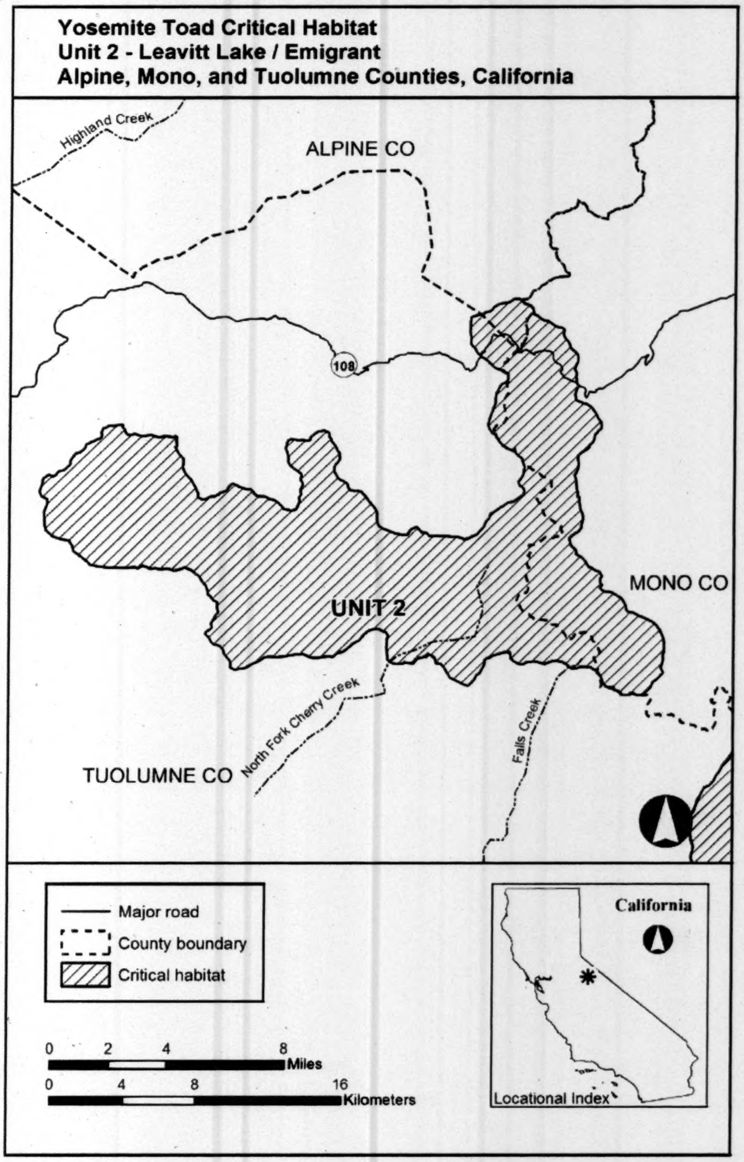
(5) Index map for Yosemite toad critical habitat follows:


Yosemite Toad
Critical Habitat
Index Map
ALPINE CO
UNIT 1
UNIT 2
TUOLUMNE CO
UNIT 3
UNIT 4
UNIT 5
UNIT 6
UNIT 7
UNIT 8
UNIT 9
UNIT 10
UNIT 11
UNIT 12
UNIT 13
UNIT 14
UNIT 15
UNIT 16
MONO CO
MARIPOSA CO
INYO CO
MADERA CO
FRESNO CO
County Boundary
Critical Habitat
0 7.5 15 30 Miles
0 12.5 25 50 Kilometers
California
Locational Index

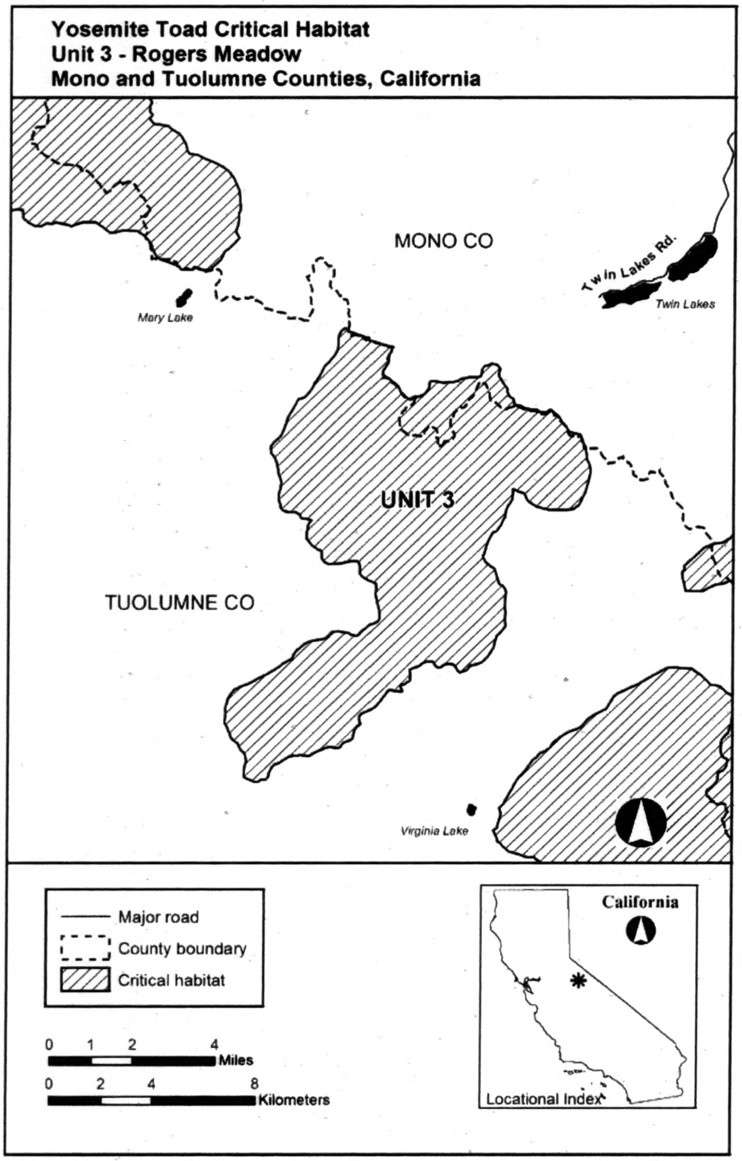
(6) Unit 1: Blue Lakes/Mokelumne, Alpine County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 1 - Blue Lakes / Mokelumne
Alpine County, California
Bear Lakes Rd.
Pleasant Valley Rd.
ALPINE CO
4
4
UNIT 1
Major road
County boundary
Critical habitat
0
1.5
3
6
Miles
0
2.5
5
10
Kilometers
California
Locational Index

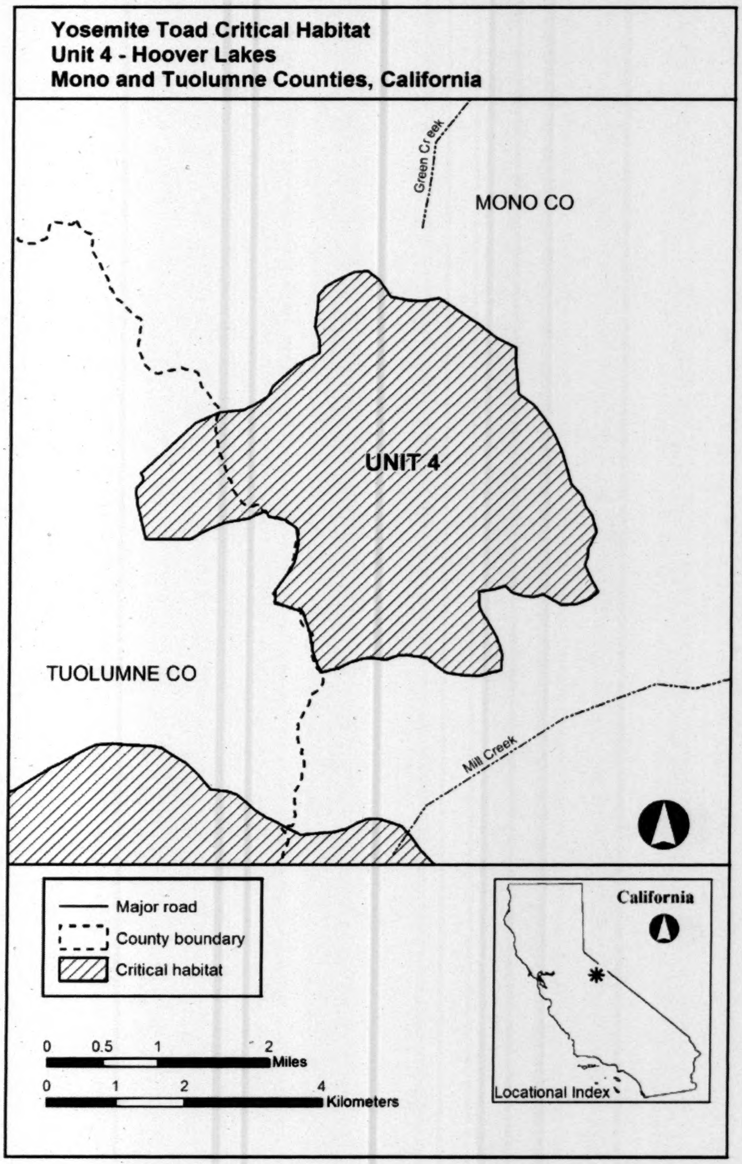
(7) Unit 2: Leavitt Lake/Emigrant, Alpine, Mono, and Tuolumne Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 2 - Leavitt Lake / Emigrant
Alpine, Mono, and Tuolumne Counties, California
Highland Creek
ALPINE CO
108
UNIT 2
MONO CO
North Fork Cherry Creek
Falls Creek
TUOLUMNE CO
Major road
County boundary
Critical habitat
0 2 4 8 Miles
0 4 8 16 Kilometers
California
Locational Index

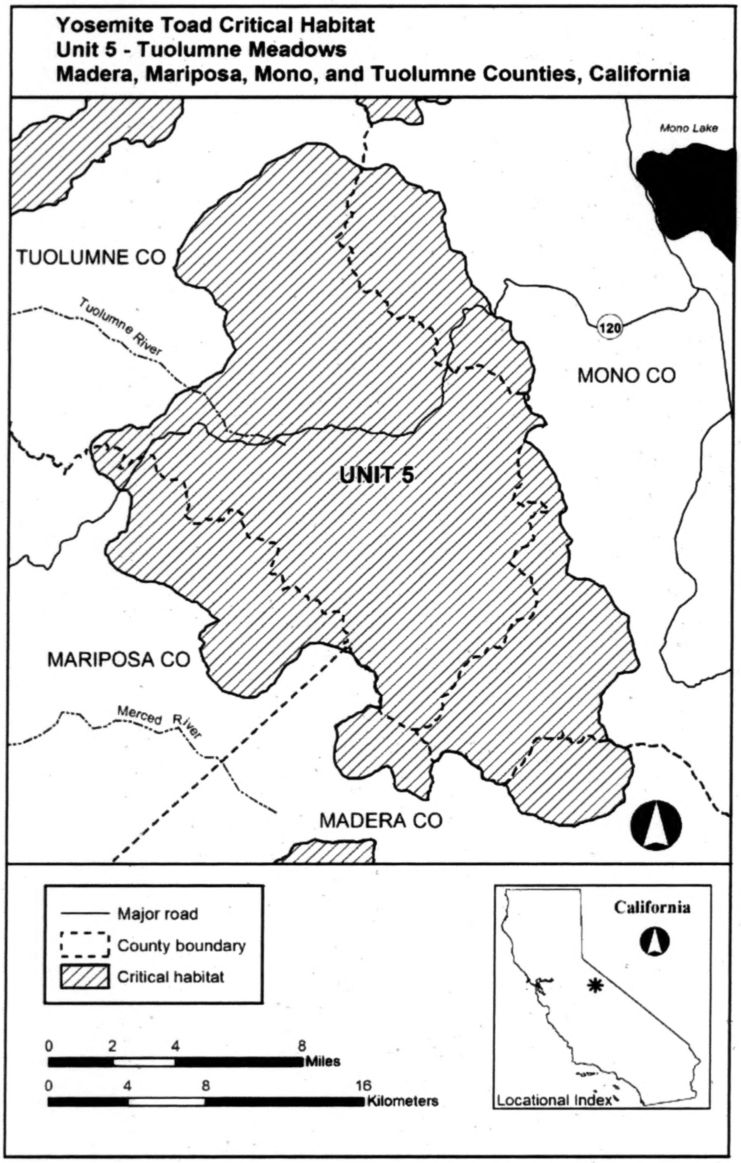
(8) Unit 3: Rogers Meadow, Mono and Tuolumne Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 3 - Rogers Meadow
Mono and Tuolumne Counties, California
MONO CO
Twin Lakes Rd.
Twin Lakes
Mary Lake
UNIT 3
TUOLUMNE CO
Virginia Lake
Major road
County boundary
Critical habitat
0 1 2 4 Miles
0 2 4 8 Kilometers
California
Locational Index

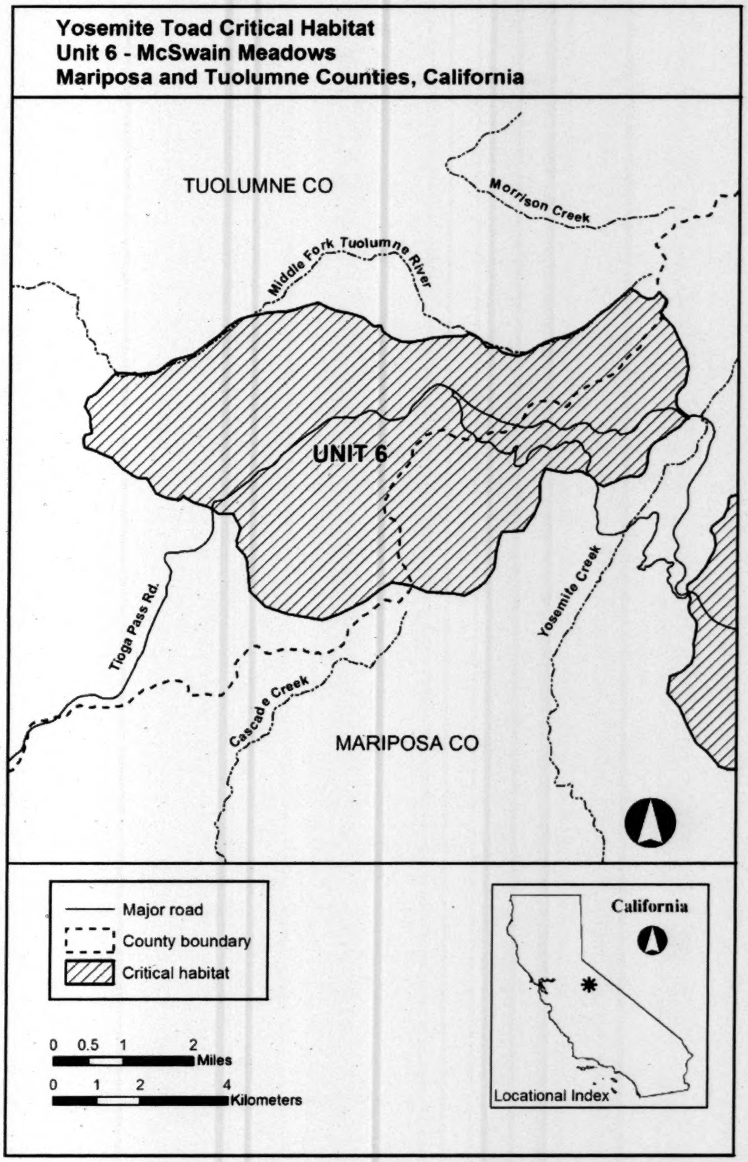
(9) Unit 4: Hoover Lakes, Mono and Tuolumne Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 4 - Hoover Lakes
Mono and Tuolumne Counties, California
Green Creek
MONO CO
UNIT 4
TUOLUMNE CO
Mill Creek
Major road
County boundary
Critical habitat
0 0.5 1 2 Miles
0 1 2 4 Kilometers
California
Locational Index

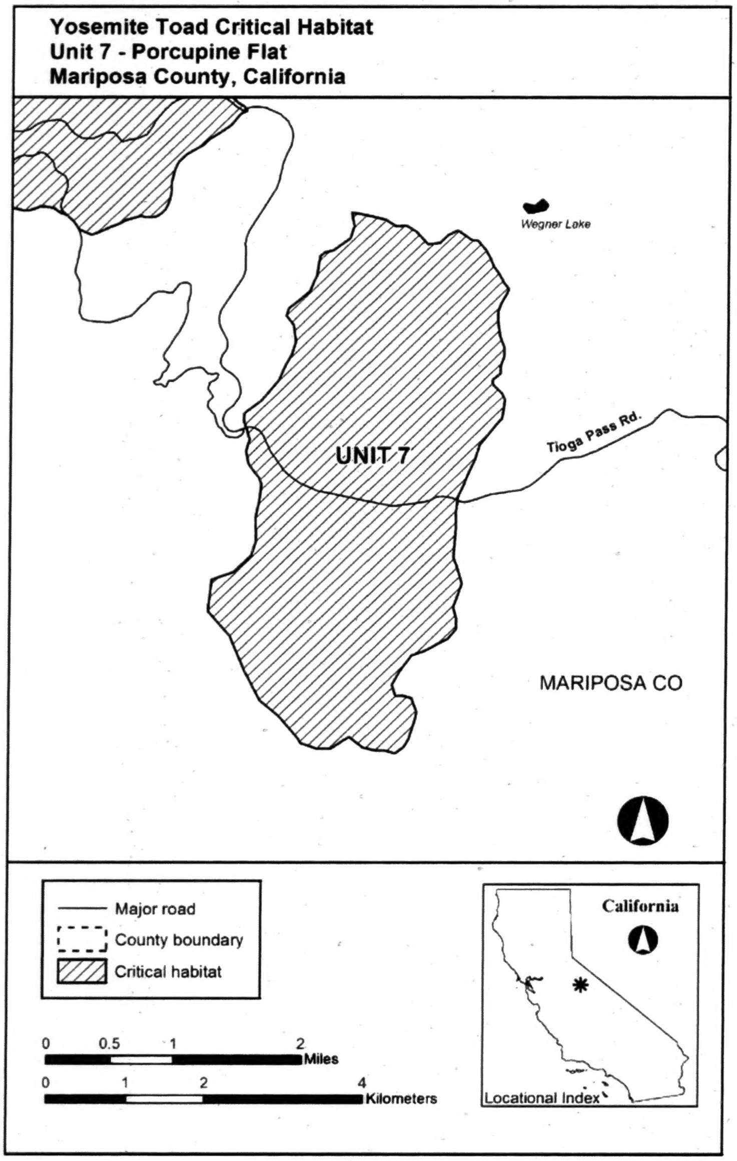
(10) Unit 5: Tuolumne Meadows/Cathedral, Madera, Mariposa, Mono, and Tuolumne Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 5 - Tuolumne Meadows
Madera, Mariposa, Mono, and Tuolumne Counties, California
Mono Lake
TUOLUMNE CO
Tuolumne River
120
MONO CO
UNIT 5
MARIPOSA CO
Merced River
MADERA CO
Major road
County boundary
Critical habitat
0 2 4 8 Miles
0 4 8 16 Kilometers
California
Locational Index

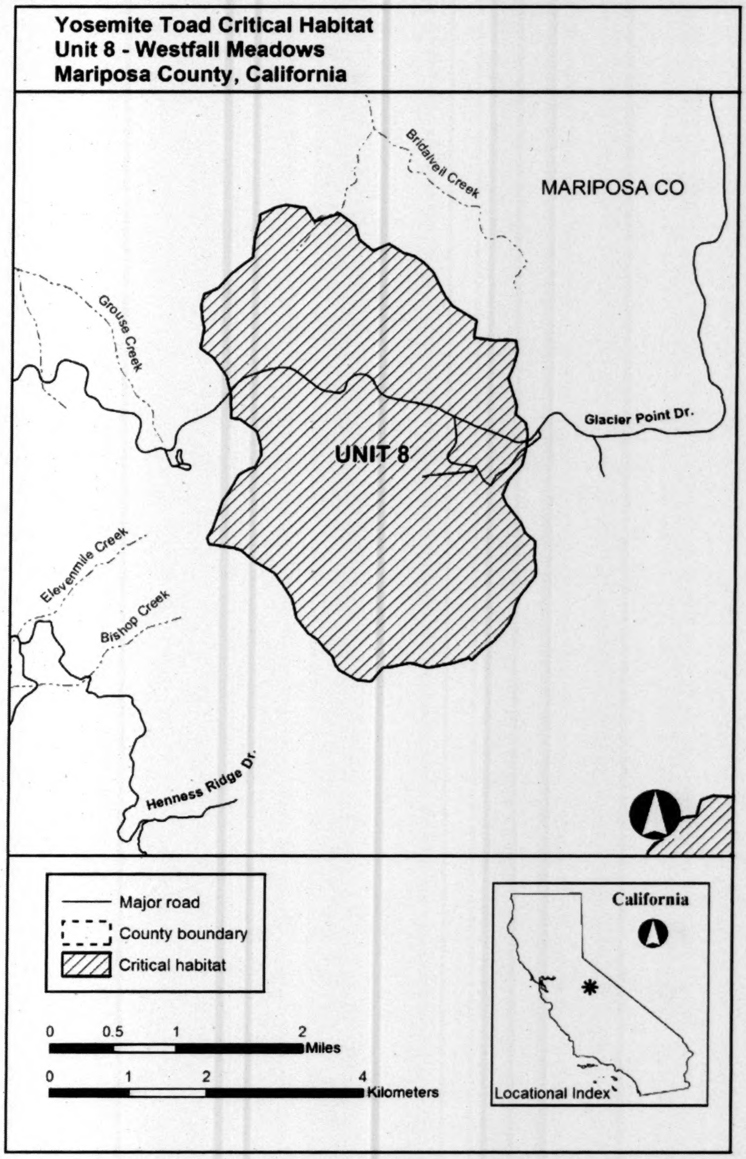
(11) Unit 6: McSwain Meadows, Mariposa and Tuolumne Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 6 - McSwain Meadows
Mariposa and Tuolumne Counties, California
TUOLUMNE CO
Morrison Creek
Middle Fork Tuolumne River
UNIT 6
Tioga Pass Rd.
Yosemite Creek
Cascade Creek
MARIPOSA CO
Major road
County boundary
Critical habitat
0 0.5 1 2 Miles
0 1 2 4 Kilometers
California
Locational Index

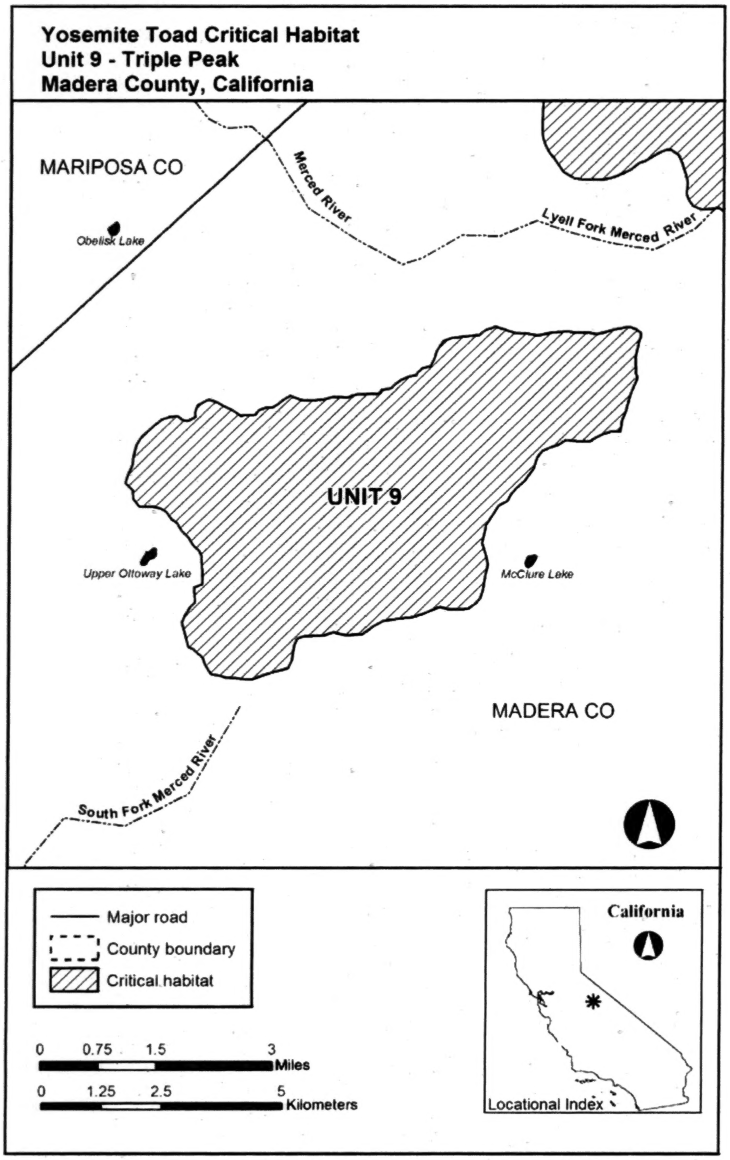
(12) Unit 7: Porcupine Flat, Mariposa County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 7 - Porcupine Flat
Mariposa County, California
Wegner Lake
UNIT 7
Tioga Pass Rd.
MARIPOSA CO
Major road
County boundary
Critical habitat
0
0.5
1
2
Miles
0
1
2
4
Kilometers
California
Locational Index

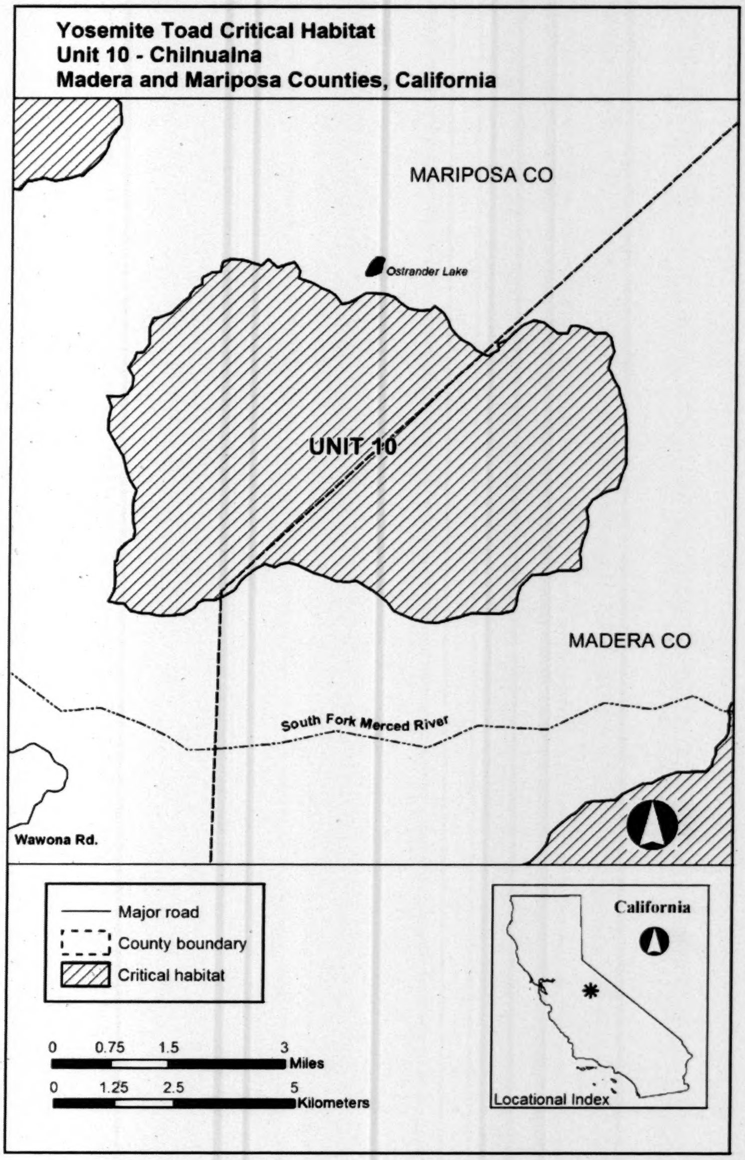
(13) Unit 8: Westfall Meadows, Mariposa County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 8 - Westfall Meadows
Mariposa County, California
Bridalveil Creek
MARIPOSA CO
Grouse Creek
Glacier Point Dr.
UNIT 8
Elevenmile Creek
Bishop Creek
Henness Ridge Dr.
Major road
County boundary
Critical habitat
0 0.5 1 2 Miles
0 1 2 4 Kilometers
California
Locational Index

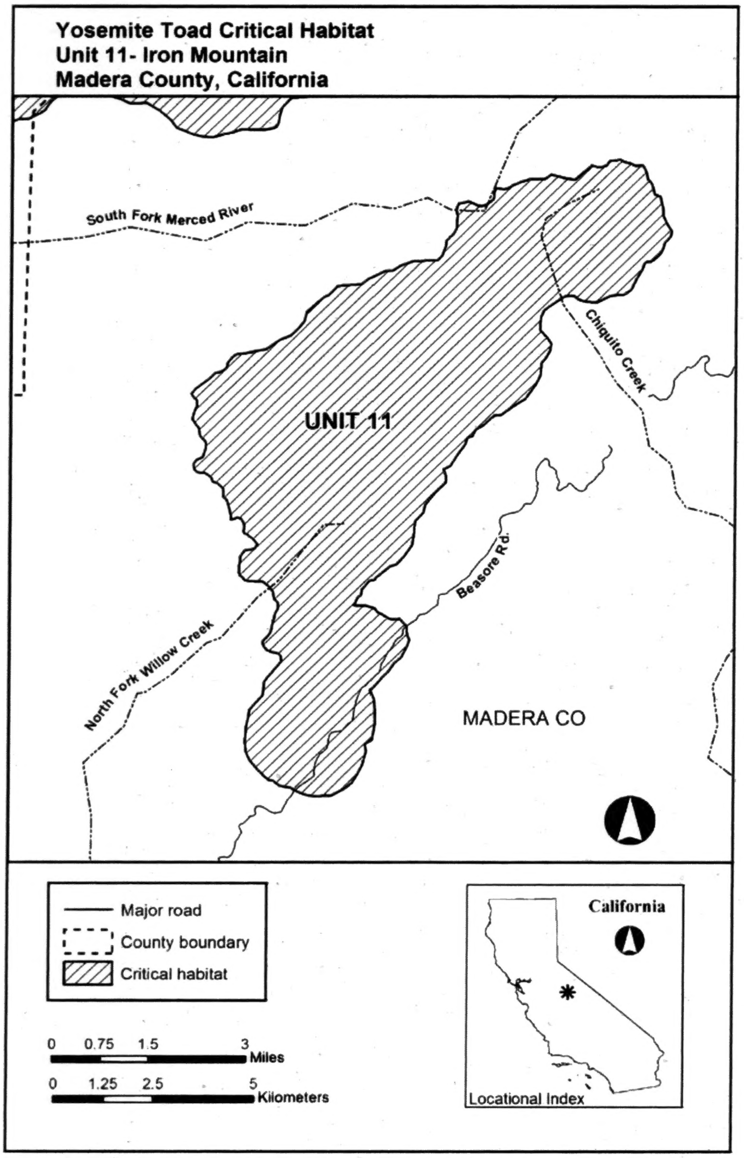
(14) Unit 9: Triple Peak, Madera County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 9 - Triple Peak
Madera County, California
MARIPOSA CO
Merced River
Lyell Fork Merced River
Obelisk Lake
UNIT 9
Upper Ottoway Lake
McClure Lake
MADERA CO
South Fork Merced River
Major road
County boundary
Critical habitat
0 0.75 1.5 3 Miles
0 1.25 2.5 5 Kilometers
California
Locational Index

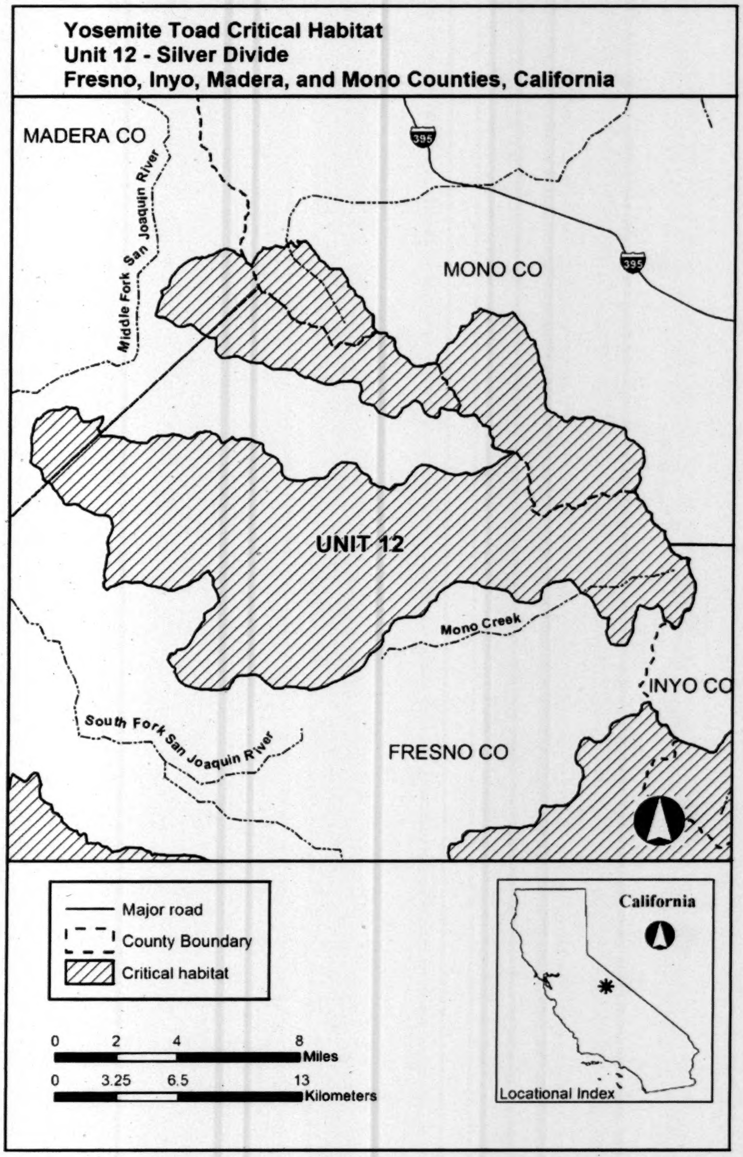
(15) Unit 10: Chilnualna, Madera and Mariposa Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 10 - Chilnualna
Madera and Mariposa Counties, California
MARIPOSA CO
Ostrander Lake
UNIT 10
MADERA CO
South Fork Merced River
Wawona Rd.
Major road
County boundary
Critical habitat
0 0.75 1.5 3 Miles
0 1.25 2.5 5 Kilometers
California
Locational Index

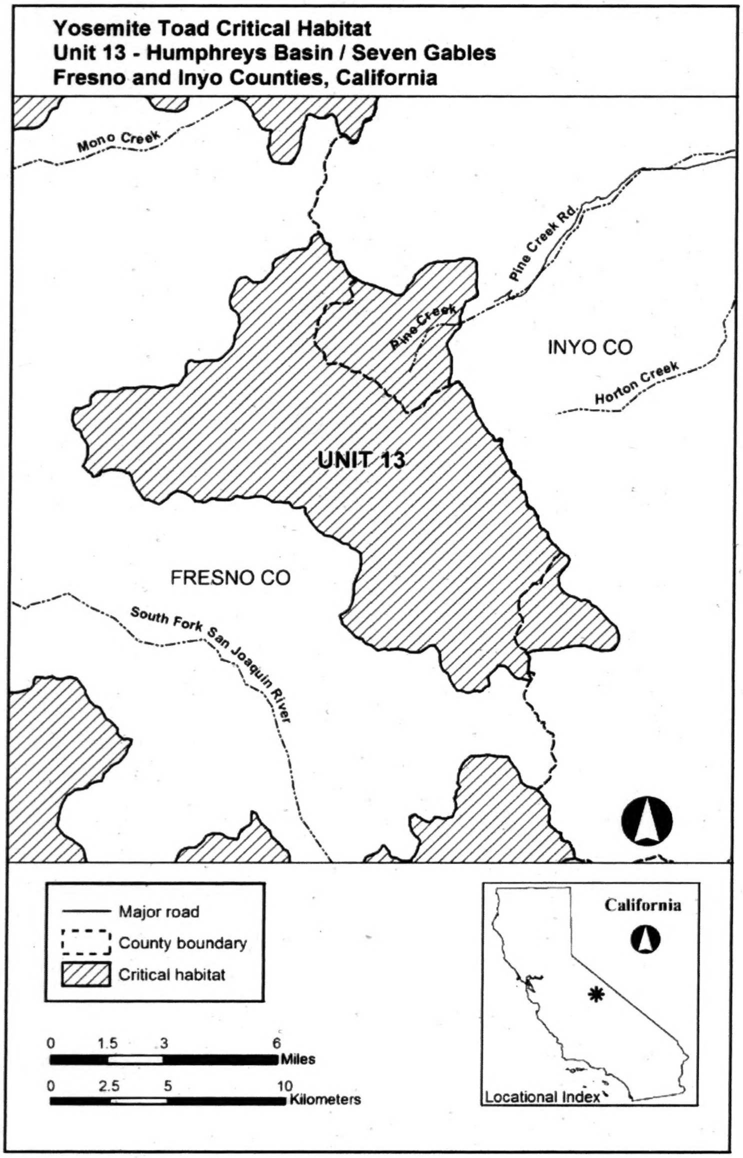
(16) Unit 11: Iron Mountain, Madera County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 11- Iron Mountain
Madera County, California
South Fork Merced River
Chiquito Creek
UNIT 11
Beasore Rd.
North Fork Willow Creek
MADERA CO
Major road
County boundary
Critical habitat
0 0.75 1.5 3 Miles
0 1.25 2.5 5 Kilometers
California
Locational Index

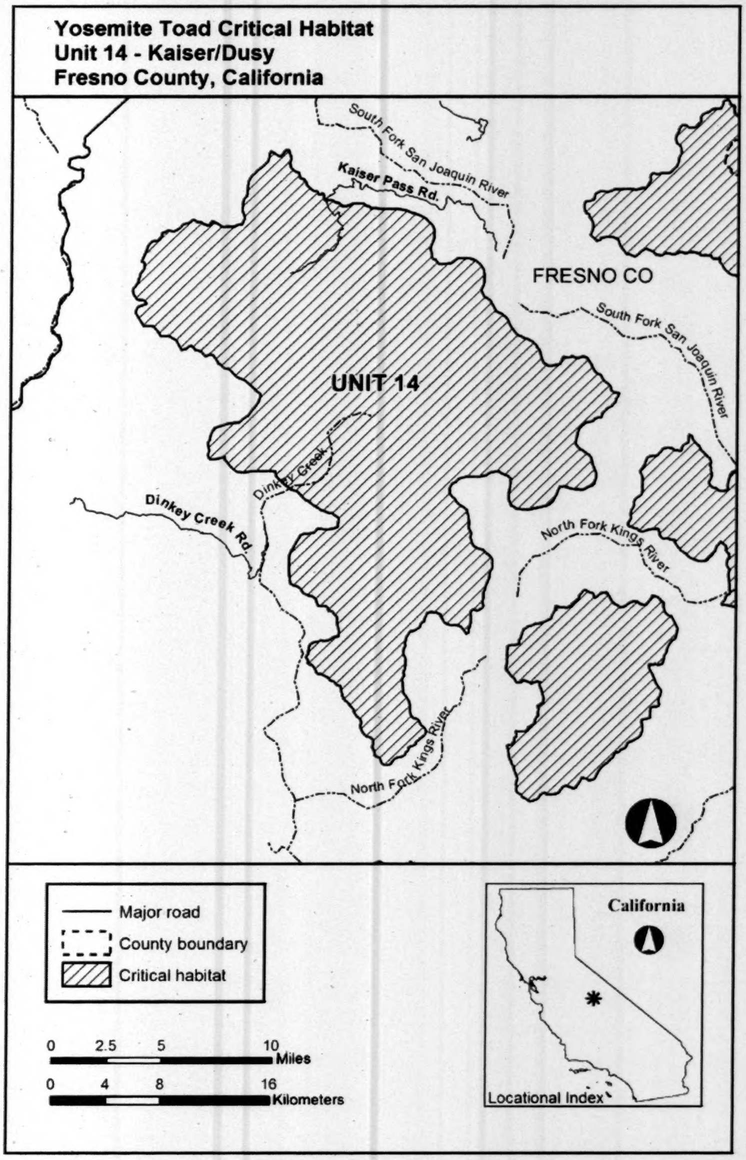
(17) Unit 12: Silver Divide, Fresno, Inyo, Madera, and Mono Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 12 - Silver Divide
Fresno, Inyo, Madera, and Mono Counties, California
MADERA CO
Middle Fork San Joaquin River
395
MONO CO
395
UNIT 12
Mono Creek
INYO CO
South Fork San Joaquin River
FRESNO CO
Major road
County Boundary
Critical habitat
0 2 4 8 Miles
0 3.25 6.5 13 Kilometers
California
Locational Index

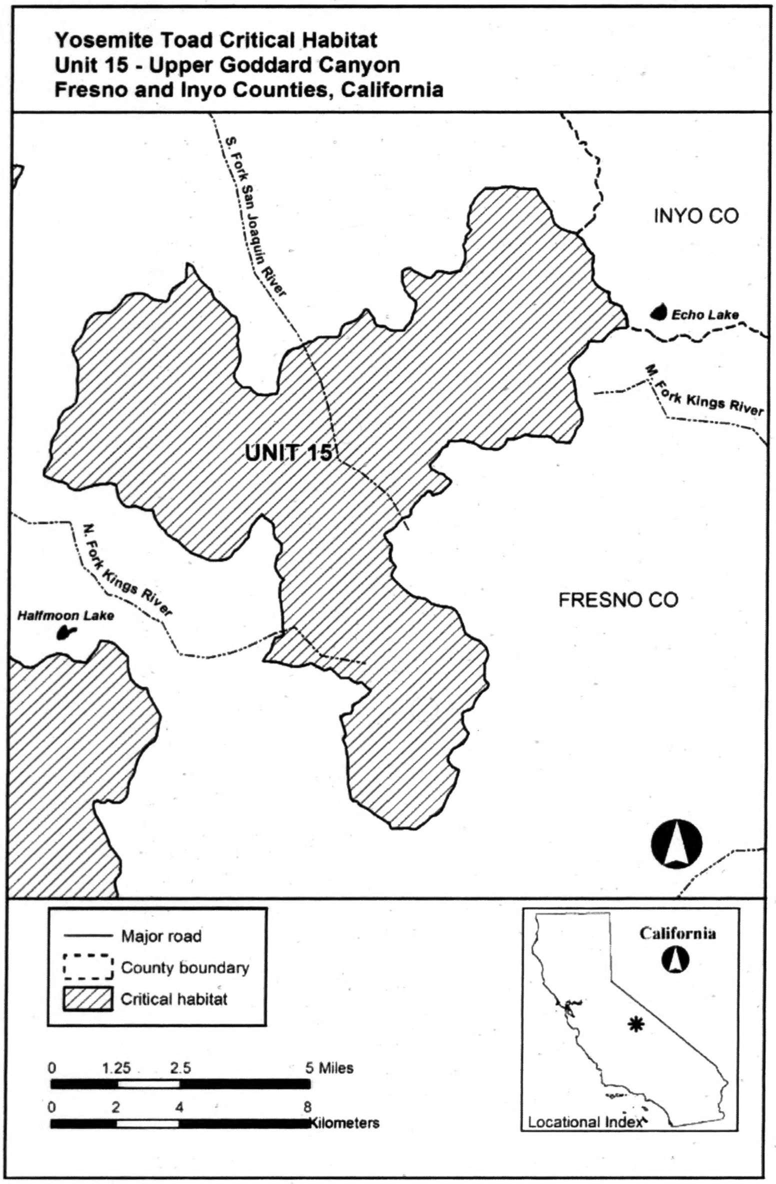
(18) Unit 13: Humphrys Basin/Seven Gables, Fresno and Inyo Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 13 - Humphreys Basin / Seven Gables
Fresno and Inyo Counties, California
Mono Creek
Pine Creek Rd.
Pine Creek
INYO CO
Horton Creek
UNIT 13
FRESNO CO
South Fork San Joaquin River
Major road
County boundary
Critical habitat
0 1.5 3 6 Miles
0 2.5 5 10 Kilometers
California
Locational Index

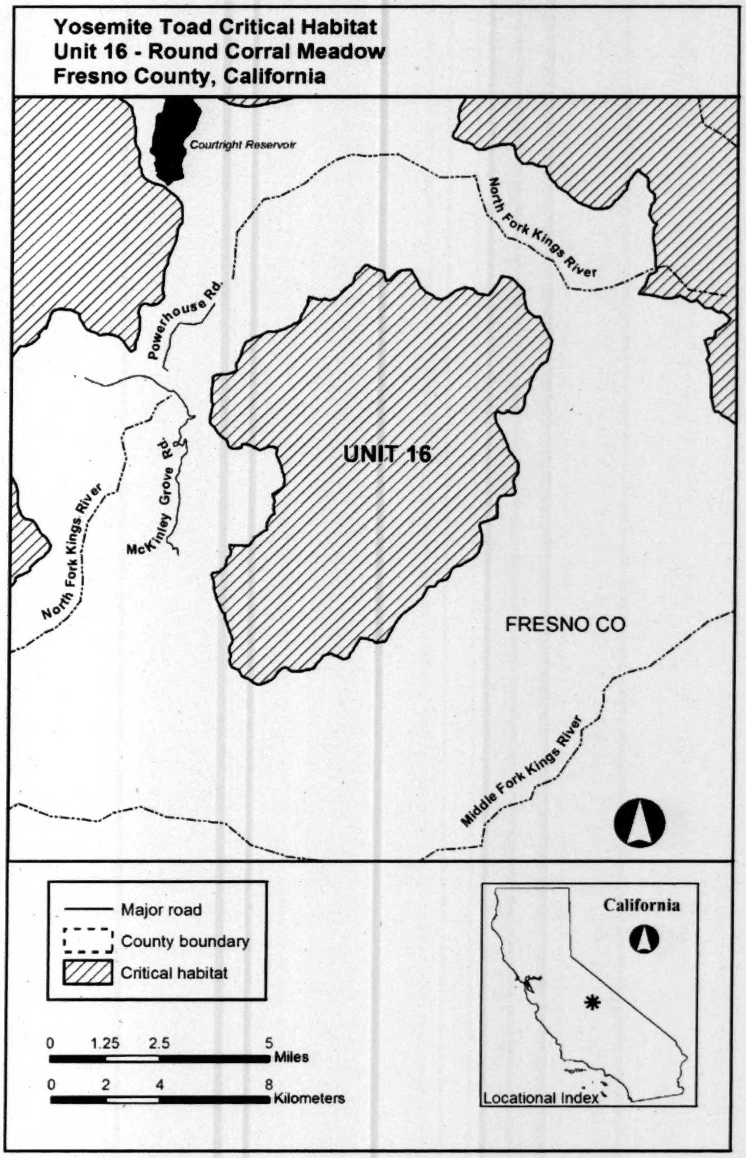
(19) Unit 14: Kaiser/Dusy, Fresno County, California. Map follows:


Yosemite Toad Critical Habitat
Unit 14 - Kaiser/Dusy
Fresno County, California
South Fork San Joaquin River
Kaiser Pass Rd.
FRESNO CO
South Fork San Joaquin River
UNIT 14
Dinkey Creek
Dinkey Creek Rd
North Fork Kings River
North Fork Kings River
Major road
County boundary
Critical habitat
0 2.5 5 10 Miles
0 4 8 16 Kilometers
California
Locational Index

(20) Unit 15: Upper Goddard Canyon, Fresno and Inyo Counties, California. Map follows:


Yosemite Toad Critical Habitat
Unit 15 - Upper Goddard Canyon
Fresno and Inyo Counties, California
S. Fork San Joaquin River
INYO CO
Echo Lake
M. Fork Kings River
UNIT 15
N. Fork Kings River
Halfmoon Lake
FRESNO CO
Major road
County boundary
Critical habitat
0 1.25 2.5 5 Miles
0 2 4 8 Kilometers
California
Locational Index

(21) Unit 16: Round Corral Meadow, Fresno County, California. Map follows:



Yosemite Toad Critical Habitat
Unit 16 - Round Corral Meadow
Fresno County, California

Courtright Reservoir
North Fork Kings River
Powerhouse Rd.
McKinley Grove Rd.
North Fork Kings River
UNIT 16
FRESNO CO
Middle Fork Kings River
Major road
County boundary
Critical habitat
0 1.25 2.5 5 Miles
0 2 4 8 Kilometers
California
Locational Index

* * * * *

Dated: August 16, 2016.

Karen Hyun,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–20352 Filed 8–25–16; 8:45 am]

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